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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

PETER WILSON, on behalf of himself and all  
others similarly situated,

Plaintiffs,

v.

GATEWAY, INC.,

Defendant.

Case No. CV-09-07560 GW (VBKx)

**NOTICE OF MOTION AND  
JOINT STIPULATION PURSUANT TO  
LOCAL RULES 37-2.1 AND 45-1  
AND FOR COSTS AND SANCTIONS**

**The Honorable Victor B. Kenton**

Class-related Discovery Cutoff: Oct. 30, 2010  
Motion for Class Certification: Jan. 24, 2011  
Trial Date & Pre-Trial Conference: N/A

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on Monday, October 4, 2010, at 9:30 a.m., or  
 3 as soon thereafter as may be heard in the Courtroom of the Honorable Victor B.  
 4 Kenton, located at 312 North Spring Street in Los Angeles, California, Plaintiff, by  
 5 his attorneys, Meiselman, Denlea, Packman, Carton & Eberz P.C. and Caldwell  
 6 Leslie & Proctor, PC, will move for an Order pursuant to Local Rules 37-2.1 and  
 7 45-1, that National Electronics Warranty LLC (“NEW”) produce documents in  
 8 response to a non-party subpoena issued June 24, 2010.<sup>1</sup>

9 **I. PARTIES’ INTRODUCTORY STATEMENTS**

10 **A. *Movant’s Introductory Statement***

11 Plaintiff Peter Wilson (“Wilson” or “Plaintiff”) moves to compel the  
 12 production of any and all documents responsive to Plaintiff’s June 24, 2010  
 13 subpoena to NEW. Despite Plaintiff’s multiple requests, NEW has produced only  
 14 89 pages of documents responsive to the June subpoena. *See* Declaration of  
 15 Matthew O’Brien (“O’Brien Decl.”), ¶ 2. NEW admits that additional responsive  
 16 documents are in its possession, custody or control, yet refuses to fully comply with  
 17 the subpoena based on a number of objections that lack legal or factual support.

18 The events leading to this litigation began in July 2005, when Plaintiff  
 19 purchased a laptop computer from Defendant Gateway, Inc. (“Gateway”) along with  
 20 a four-year extended service warranty plan (“ESP”). In February 2009, when the  
 21 ESP was still active, Plaintiff’s laptop ceased functioning and was in need of repair.  
 22 Plaintiff contacted Gateway at this time to exercise his warranty rights and have  
 23 Gateway honor its agreement to repair his computer.

---

24  
 25 <sup>1</sup> Plaintiff first served the subpoena to NEW on June 1, 2010. When Defendant  
 26 Gateway complained that it had not been served a copy of the June 1 subpoena,  
 27 Plaintiff re-served the subpoena to both NEW and Gateway on June 24.  
 28 Accordingly, NEW has had three months’ notice of the requests contained in the  
 subpoena.

1       Upon contacting Gateway, Plaintiff was informed that all service and support  
2 for his computer was being handled by MPC Corporation (“MPC”) which had  
3 purchased the Gateway Professional Business division and held the contractual  
4 obligation to honor ESPs such as the one purchased by Plaintiff. Plaintiff then  
5 contacted MPC only to discover that it had filed for bankruptcy, was out of business,  
6 and could not service his computer or honor his warranty.

7       On October 16, 2009, Plaintiff filed this putative class action for breach of  
8 contract and unjust enrichment against Gateway (and several individual defendants  
9 whom Plaintiff later voluntarily dismissed), alleging that Gateway refused to honor  
10 its ESP obligations. Pursuant to Judge Wu’s August 2, 2010 order, Plaintiff now  
11 faces a November 30, 2010 deadline to file the motion for class certification. *See*  
12 O’Brien Decl., Exh. E (Docket No. 39). The court-ordered cutoff for document  
13 production is September 30, 2010. *Id.*

14       The limited discovery produced by Gateway and NEW to date reveals a  
15 complex series of agreements and “reverse” agreements through which Gateway and  
16 NEW “passed the buck” to avoid honoring the ESP warranties. Gateway and NEW  
17 are now trying to hold each other accountable. This finger-pointing has stymied  
18 Plaintiff’s attempts to obtain discovery in aid of class certification as NEW has  
19 refused to produce any documents it claims Gateway “has agreed to produce” or to  
20 which “Gateway has more ready access.” *See* O’Brien Decl., Ex. B (Letter from  
21 Geoffrey T. Stover to Joshua S. Bauchner, dated August 19, 2010, at 3 (“Stover  
22 Ltr.”)). Notably, most of the documents NEW claims Gateway has “agreed to  
23 produce” or “has more ready access” to have not been produced to Plaintiff.

24       The limited documents produced to date demonstrate that NEW played an  
25 integral role in the servicing of the ESP warranties. NEW should be compelled to  
26 produce any and all responsive documents in its possession, custody, or control to  
27 ensure Plaintiff’s ability to file the motion for class certification in a timely fashion  
28 in accordance with the Court’s schedule.

1 **B. NEW's Introductory Statement**

2 Plaintiff seeks an order from this Court that would compel NEW to produce  
 3 millions of customer records related to the administration of the Gateway ESP  
 4 program. As explained below, Plaintiff's motion should be denied because  
 5 (1) Plaintiff's Subpoena is, on the whole, unreasonably broad; it essentially requires  
 6 NEW to produce every electronic record and piece of paper that has anything to do  
 7 with the Gateway ESP program; (2) NEW was not responsible for the customer care  
 8 functions (the call center and claims administration) and so any customer records  
 9 and information that non-party NEW<sup>2</sup> has in its possession came from Defendant  
 10 Gateway, or some other party; and (3) although Plaintiff acknowledges that only  
 11 class discovery is relevant at this time, many of the document requests prematurely  
 12 seek information related to the merits of Plaintiff's liability claims. Further, NEW  
 13 notes that a case recently filed in Delaware seeks an injunction preventing NEW  
 14 from disclosing any customer records related to extended service plan programs,  
 15 including the Gateway ESP.

16 **(1) Plaintiff's document requests are unreasonably broad and**  
 17 **seek to impose an unjustifiable burden on NEW**

18 Plaintiff's Subpoena *Duces Tecum* ("the Subpoena") requires NEW to produce  
 19 56 categories of documents, including "[a]ll documents concerning any Gateway  
 20 Warranty" (Request No. 1), "[a]ll documents concerning the identity of any person  
 21 who owned any Gateway Warranties" (Request No. 14), and "[a]ll documents  
 22 concerning the honor [sic] of any Gateway Warranties by NEW" (Request No. 45).  
 23 Notably, Plaintiff has sought essentially the same documents from Gateway, which  
 24 has indicated in its responses that it is going to produce, or has already produced,

---

25  
 26 <sup>2</sup> Even if NEW is later named as a third-party defendant, the Subpoena must be  
 27 evaluated as a demand for requests from a non-party. And even if the Court treats  
 28 NEW as a party to this lawsuit, Plaintiff's document demands are unreasonably  
 broad.

1 documents responsive to a substantial number of Plaintiff's requests.<sup>3</sup> In short,  
 2 Plaintiff's document requests are exceedingly overbroad and impose onerous  
 3 burdens that far exceed the scope of NEW's Rule 16 and 45 discovery obligations.

4 The burden NEW would face is quite real. NEW estimates that Plaintiff's  
 5 requests seek documents and records relative to approximately 1.9 million customer  
 6 contracts. (Declaration of Barry Danoff ("Danoff Decl."), ¶ 7.) These records are  
 7 stored in various databases (comprised of hundreds of "sales load feeds," or uploads,  
 8 received from Gateway), in customer-related databases and in monthly claims files.  
 9 (*Id.*) Just to mine the customer data requested would take two NEW employees  
 10 approximately *four to six weeks of full-time work*, and additional NEW  
 11 representatives would be required to interpret Gateway-specific records. (*Id.*, ¶ 11.)  
 12 Of course, NEW would also incur significant additional expense of reviewing  
 13 millions of pages of documents to ensure that NEW's attorney-client privileged  
 14 communications and the company's work product are fully protected.

15 **(2) NEW was not the claims administrator for the Gateway ESP**  
 16 **program and did not operate the Gateway ESP call center**

17 NEW is in the business of providing services related to consumer electronics  
 18 ESPs, including claims administration and other customer-related administration  
 19 services. (*Id.*, ¶ 3.) Typically, NEW operates the call centers that handle customers'  
 20 claims under the ESPs. (*Id.*, ¶ 4.) That was not the case, however, for the Gateway  
 21 ESP program.

22 As reflected in the Reverse Service Contract Administration Agreement  
 23 ("RSCAA") between Gateway and NEW, Gateway assumed responsibility for  
 24 operating the call center and the attendant claims administration duties.

---

25  
 26 <sup>3</sup> Notably, Gateway has agreed to produce documents responsive to well over half of  
 27 Plaintiff's requests. *See* Gateway's Response, Nos. 1, 2, 3, 6, 9, 10, 11, 12, 13, 14,  
 28 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 39, 44, 45, 46, 52, 53, 54, 55,  
 56, 57, 65, 66, 67, 68, 69.

(Declaration of Geoffrey Stover (“Stover Decl.”), Ex. “A.”)<sup>4</sup> Consequently, any customer records NEW may have in its possession were received by NEW from Gateway, or some other Gateway-related entity.

**(3) Plaintiff’s “merits” requests are premature.**

By Plaintiff’s own admission, “[c]lass certification entitles Plaintiff Wilson to, among other things, seek information relevant to the number and identity of Gateway customers who owned Extended Service Plan (“ESP”) warranties after January 1, 2005, as well as the number and identity of those warranty holders who contacted Gateway to seek service under this ESP warranty yet were denied such service.” (Stover Decl., Ex. “C.”) NEW objects to Plaintiff’s requests insofar as they prematurely seek documents related to the ultimate merits of Plaintiff’s claims regarding liability.

**(4) A recently-filed Delaware lawsuit seeks to enjoin NEW from disclosing any of the records at issue in this motion to compel.**

On August 26, 2010, Chartis Warrantyguard, Inc. (“Chartis”), filed suit against NEW in the Court of Chancery of Delaware, seeking, among other things, an injunction preventing NEW from “Disclosing Chartis Protected Information to third parties.” (Stover Decl., Ex. “D.”) The documents and records at issue here—the customer data and other records related to the Gateway ESPs—appear to fall under Chartis’ definition of “Protected Information.” Although Chartis’ claims are without merit, the Chancery Court will hear arguments on Chartis’ motion for preliminary injunction in October. (Stover Decl., ¶ 7.) This ruling could impact the instant motion.

---

<sup>4</sup> Notably, Gateway assumed contractual responsibility for the customer service functions of all of the Gateway ESPs, including those that fell under the MPC wing of the re-formed Gateway companies. (Stover Decl., Ex. “B.”)

1 **II. MOVANT'S STATEMENT OF RELEVANT FACTS**

2 Gateway's subsidiary Gateway Companies, Inc. ("GCI") and NEW entered  
 3 into a Service Contract Administration Agreement ("SCAA"), dated November 30,  
 4 2004, but retroactively effective to October 1, 2005, in which Gateway agreed to  
 5 offer and sell its customers NEW ESPs covering defined Gateway products within  
 6 Gateway's Professional Business division. The SCAA obligated NEW to  
 7 administer, service, and honor the ESP warranties sold by Gateway on NEW's  
 8 behalf. NEW's responsibilities included providing technical support, customer  
 9 service, and repair services (collectively "Service") to ESP warranty holders such as  
 10 Plaintiff.<sup>5</sup>

11 In or about October 2007, Gateway sold its Professional Business division,  
 12 including its subsidiary GCI, to MPC. On or about August 4, 2008, Gateway and  
 13 NEW entered into a Second Amendment to the SCAA, retroactively effective to  
 14 May 31, 2007, substituting Gateway Manufacturing, LLC ("GMLLC") as NEW's  
 15 counterparty under the agreement. On that same date, and with the same retroactive  
 16 effective date, NEW and GMLLC entered into a "Reverse" SCAA under which  
 17 GMLLC assumed the obligation to administer the delivery of Service under the  
 18 ESPs.

19 Plaintiff is in the process of unraveling this corporate deal-making, which  
 20 only recently has come to light. What is clear is that, as a result of the transactions  
 21 described above, Gateway and NEW disagree over which of them is responsible for  
 22 honoring and servicing the ESP of Plaintiff and others similarly situated.

23 ///

24 ///

---

25  
 26 <sup>5</sup> Plaintiff purchased his computer through his college and thus fell within  
 27 Gateway's Professional Business division which sold products and services to  
 28 business, education and government markets.



1           **A.     *Recent Procedural History***

2           On August 16, 2010, Gateway filed a Motion for Leave to File a Third-Party  
 3 Complaint against NEW, and certain insurance company obligors, which the Court  
 4 calendared for a hearing on September 13, 2010. *See* O’Brien Decl., Exh. G  
 5 (Docket No. 41). In its Third-Party Complaint, Gateway alleges that it sold its  
 6 Professional Business division, including GCI, to MPC on or about October 2007.  
 7 *See id.*, Exh. A to the Declaration of Eric M. Kennedy, ¶ 11. Gateway further  
 8 alleges that the sale of its Professional Business division did not alter NEW’s  
 9 obligations under the ESPs and that NEW simply hired MPC (either directly or  
 10 through MPC’s newly purchased subsidiary, GCI) to service the warranties in its  
 11 behalf. *See id.* Gateway contends NEW’s decision to hire MPC “made sense”  
 12 because GCI had always been retained by NEW to service the ESPs on its behalf.  
 13 *Id.* Gateway alleges MPC/GCI provided Service, on NEW’s behalf, until at least  
 14 November 6, 2008, when MPC/GCI declared bankruptcy, and that NEW continued  
 15 to pay MPC/GCI to provide Service until at least December 29, 2008, when it  
 16 ceased operations. *See id.* at ¶ 12.

17           NEW, by contrast, insists that Gateway is responsible for providing Service  
 18 under the ESPs and that, as a “non-party,” it is deserving of “heightened protection”  
 19 negating its obligation to produce documents responsive to Plaintiff’s subpoena.  
 20 O’Brien Decl., Exh. B, at 1-3. Accordingly, NEW’s entire production to date is  
 21 limited to what it contends are the “operative written agreements” governing NEW’s  
 22 relationship with Gateway which purportedly demonstrate Gateway’s contractual  
 23 obligations under the ESP warranties. *See* Section III.A., *infra* (NEW’s Objections  
 24 and Responses to Plaintiff’s Subpoena, Response Nos. 1-5 & 13).

25           NEW’s current dispute with Gateway confirms NEW’s essential role in this  
 26 litigation and its possession of responsive material. NEW should not be permitted to  
 27 use its dispute with Gateway as a shield from class discovery. Nor should NEW be  
 28



1 permitted to rely on its (likely temporary) status as a non-party as a basis to refuse to  
2 comply with Plaintiff's subpoena.

3 Plaintiff and NEW's meet and confer efforts have been unsuccessful.  
4 Counsel for Plaintiff and NEW met and conferred as to NEW's Responses to  
5 Plaintiff's subpoena on August 5 and 11, 2010. *See* O'Brien Decl., ¶ 3. Plaintiff  
6 sent NEW a follow-up meet-and-confer letter on August 11, 2010. *See id.*, Exh. A.  
7 NEW sent Plaintiff a response letter on August 19. *See id.*, Exh. B. On August 27,  
8 Plaintiff's counsel notified NEW that it intended to provide its half of the instant  
9 Joint Stipulation on August 31. *See* O'Brien Decl., ¶ 6. Plaintiff's counsel did so  
10 on September 1. *See id.*, ¶ 7.

#### 11 ***B. NEW's Additional Procedural Facts***

12 NEW notes that Plaintiff's own delays play a significant role in the necessity  
13 and the timing of this motion to compel. For example, Plaintiff waited until August  
14 5, 2010 to contact NEW about its responses to the Subpoena, nearly a month after  
15 NEW timely served its objections on July 6. (Stover Decl., ¶ 2.) Moreover, despite  
16 NEW's letter of August 19 inviting Plaintiff to further discuss the discovery issues,  
17 Plaintiff simply plowed forward and filed this motion. (*Id.*, ¶ 6.) Notably, this  
18 motion will be heard four days *after* Judge Wu's deadline to complete class  
19 document discovery. (Dkt. 39.)

### 20 **III. DISCOVERY REQUESTS AND RESPONSES AT ISSUE**

#### 21 ***A. Requests and Responses Nos. 1-5 and 13***

22 NEW has limited its response to these six Requests to the production of the  
23 "operative written agreements" between it and Gateway.

#### 24 **(1) Request and Response No. 1**

##### 25 **(a) Request No. 1**

26 All documents concerning any Gateway Warranty.  
27  
28

1 **(b) Response and Objection to Request No. 1**

2 In addition to its General Objections, NEW objects to this Request on the  
3 ground that it is overly broad as to time and scope. NEW further objects to this  
4 Request on the ground that it is unduly burdensome and oppressive, and seeks  
5 documents and information that are outside the scope of this action and are not  
6 likely to lead to the discovery of admissible evidence.

7 NEW further objects to this Request to the extent that it seeks information  
8 protected by the attorney-client privilege and/or attorney work product doctrine.  
9 NEW further objects to this Request to the extent that it seeks information  
10 pertaining to individuals, the disclosure of which would constitute an unwarranted  
11 invasion of the affected individuals' constitutional, statutory and/or common law  
12 rights to personal privacy and confidentiality. NEW further objects to this Request  
13 to the extent that it seeks private, privileged, and confidential commercial, financial,  
14 and/or proprietary business information. NEW further objects to this Request as  
15 premature to the extent that it seeks documents that relate to the merits of Plaintiffs  
16 claims rather than to class discovery. NEW further objects to this Request to the  
17 extent that Defendant Gateway has agreed to produce all responsive, non-privileged  
18 and relevant documents concerning any Extended Service Plan.

19 Subject to and without in any way waiving the foregoing general and specific  
20 objections and responses, and to the extent NEW understands this Request, NEW  
21 will produce the operative written agreements between NEW, Gateway and/or  
22 eMachines after the Court enters a suitable Protective Order that protects such  
23 documents from public disclosure.

24 **(c) Movant's Argument**

25 The Gateway ESP warranties are at the heart of this litigation. This class  
26 action seeks redress for Gateway's deceptive breach of the contractual obligations  
27 under the ESPs resulting in their being rendered worthless pieces of paper. Putative  
28 class action plaintiffs who requested Service under their ESP were denied such

1 Service. Other putative class action plaintiffs, who did not request Service,  
 2 nevertheless have been denied the benefit of their bargain. The production of  
 3 documents concerning the ESPs – and NEW’s role and course of conduct in regard  
 4 to providing Service under the ESPs – are thus of paramount importance to  
 5 Plaintiff’s ability to demonstrate both commonality and typicality and should not be  
 6 limited merely to the production of certain “operative written agreements” between  
 7 Gateway and NEW. *See* Fed. R. Civ. P. 23(a)(2) and (3); *see also Blackie v.*  
 8 *Barrack*, 524 F.2d 891, 902 (9th Cir. 1975) (the requirement of commonality is  
 9 satisfied where “the class is united by a common interest in determining whether a  
 10 *defendant’s course of conduct* is in its broad outlines actionable”) (emphasis added).

11 In addition to acknowledging the primacy of its role in this litigation through  
 12 the production of what NEW admits are the “operative written agreements”  
 13 governing the obligation to provide Service under the ESP warranties, NEW has  
 14 further conceded that it has in its possession documents relating specifically to  
 15 Plaintiff Wilson. *See* O’Brien Decl., Exh. C (Email from Geoffrey T. Stover to  
 16 Joshua S. Bauchner, dated August 27, 2010). NEW’s possession of documents  
 17 relating to Plaintiff Wilson and, by extension, other putative class members, are  
 18 plainly relevant to Plaintiff’s motion for class certification and should be timely  
 19 produced. Fed. R. Civ. P. 23(a)(1)-(3); *see also General Tel. Co. of the Southwest v.*  
 20 *Falcon*, 457 U.S. 147, 155 (1982) (finding class certification “‘peculiarly  
 21 appropriate’ when the ‘issues involved are common to the class as a whole’ and  
 22 when they ‘turn on questions of law applicable in the same manner to each member  
 23 of the class’” (quoting *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979)); *Doe v. Los*  
 24 *Angeles Unified School Dist.*, 48 F. Supp. 2d 1233, 1245 (C.D. Cal. 1999) (Rule  
 25 23(a)(3)’s typicality requirement is satisfied where “the action can be efficiently  
 26 maintained as a class and [] the named plaintiffs have incentives that align with

27

28

1 those of absent class members so...that the absentees' interests will be fairly  
2 represented") (citation omitted).<sup>6</sup>

### 3 (d) NEW's Argument

4 This request is exemplary of Plaintiff's overreaching. Federal Rule of Civil  
5 Procedure 45(c)(1) provides that a party responsible for issuing a subpoena must  
6 take reasonable steps to avoid imposing undue burden or expense on the subpoenaed  
7 party. *Jimena v. UBS AG Bank, Inc.*, 2010 WL 3397431, \*4 (E.D. Cal. 2010). It is  
8 the court's role to enforce this duty by "weigh[ing] the burden to the subpoenaed  
9 party against the value of the information to the serving party." *Moon v. SCP Pool*  
10 *Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005) (quoting *Travelers Indem. Co. v.*  
11 *Metropolitan Life Insur. Co.*, 228 F.R.D. 111, 113 (D. Conn. 2005)). In so doing,  
12 the court must balance "the relevance of the discovery sought, the requesting party's  
13 need, and the potential hardship to the party subject to the subpoena." *Gonzales v.*  
14 *Google*, 234 F.R.D. 674, 680 (N.D. Cal. 2006).

15 Particular consideration should be given to factors including "relevance, the  
16 need of the party for the documents, the breadth of the document request, the time  
17 period covered by it, the particularity with which the documents are described, and  
18 the burden imposed." *Moon*, 232 F.R.D. at 636. Courts are particularly likely to  
19 find an undue burden when documents are "overbroad on [their] face and exceed []  
20 the bounds of fair discovery" because they request "all" documents in a given  
21 category over an extended temporal period. *See Moon*, 232 F.R.D. at 637-38.

22 As a preliminary matter, this request is facially overbroad and unduly  
23 burdensome because it seeks "all" documents relative to every Gateway ESP issued  
24 and held over an almost six year period. *See Moon*, 232 F.R.D. at 637-38. Plaintiff  
25

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26 <sup>6</sup> NEW's objection that disclosure of any information pursuant to the subpoena  
27 would invade privacy rights and/or breach confidentiality was rendered moot by this  
28 Court's entry of a Protective Order on July 13, 2010.

1 has made no effort to narrow this request and asks the Court to compel NEW to  
 2 produce *all* sales data, warranty claims records, business records, emails,  
 3 spreadsheets, and other documentation relative to the Gateway ESP's. Such a  
 4 search would necessarily produce millions of documents, many of which would be  
 5 both irrelevant to class discovery and to this litigation as a whole. Plaintiff's request  
 6 is, therefore, grossly overbroad.

7 Moreover, NEW's burden in complying far outweighs any benefit Plaintiff  
 8 might incur. *See Gonzalez*, 234 F.R.D. at 680. NEW estimates that it is in  
 9 possession of Gateway-generated documents relative to approximately 1.9 million  
 10 customer records that are stored in hundreds of "sales loads feeds," customer-related  
 11 databases, claims files, and individual employee computers. (Danoff Decl., ¶ 7.) It  
 12 would take NEW hundreds, if not thousands, of hours of labor to gather and review  
 13 these documents. (*Id.*) Moreover, Gateway claims data is retained in NEW's  
 14 databases for a minimum of seven years and, as such, a search for responsive  
 15 documents would require NEW to sift through records that are outside the temporal  
 16 scope of this action. (*Id.*, ¶ 9.) In short, the great expense NEW will necessarily  
 17 incur in reviewing millions of documents on an expedited basis clearly dwarfs the  
 18 potential value any produced documents will offer Plaintiff.

19 NEW maintains that this request is also objectionable because Plaintiff has  
 20 not demonstrated, as he must, that he has unsuccessfully attempted to first obtain  
 21 responsive documents from Gateway. Ninth Circuit precedent is clear that, where  
 22 document requests pertain to a defendant who is a party to the action, and "plaintiffs  
 23 can more easily and inexpensively obtain the documents from defendant," placing  
 24 such a burden on a non-party constitutes an improper burden. *Moon*, 232 F.R.D. at  
 25 638 (citing *Dart Indus.*, 649 F.2d at 649).

26 Under the RSCAA, which NEW produced to Plaintiff, Gateway assumed  
 27 responsibility for the administration of the warranty service program, including  
 28 running the customer care center and handling warranty claims. (Stover Decl., ¶ 5,

1 Ex. "C.") Consequently, all of the data and documentation relevant to Plaintiff's  
 2 motion for class certification, including the identities of putative class members,  
 3 information regarding sales of ESP's, and the means by which claims on those  
 4 ESP's were adjudicated, has been generated by Gateway and only secondarily  
 5 transmitted to NEW. (Danoff Decl., ¶ 8.) Moreover, Gateway has agreed to  
 6 produce, and has already begun to produce, several responsive documents. It  
 7 therefore constitutes an undue burden for Plaintiff to seek from NEW documents  
 8 that are more readily accessible from, or have already been produced by, named  
 9 defendant Gateway. *Moon*, 232 F.R.D at 638.

10 **(2) Request and Response No. 2**

11 **(a) Request No. 2**

12 All documents concerning any contracts, agreements, or understandings,  
 13 whether formal or informal, between Gateway and NEW, including, without  
 14 limitation, concerning any obligation or duty to provide service under any Gateway  
 15 Warranty.

16 **(b) Response and Objection to Request No. 2**

17 In addition to its General Objections, NEW objects to this Request on the  
 18 ground that it is vague and ambiguous as to the terms "informal",  
 19 "understandings" and "provide service." NEW further objects to this Request on the  
 20 ground that it is overly broad as to time and scope. NEW further objects to this  
 21 Request on the ground that it is unduly burdensome and oppressive, and seeks  
 22 documents and information that are outside the scope of this action and are not likely  
 23 to lead to the discovery of admissible evidence. NEW further objects to this Request  
 24 to the extent that it seeks information protected by the attorney-client privilege  
 25 and/or attorney work product doctrine. NEW further objects to this Request to the  
 26 extent that it seeks information pertaining to individuals, the disclosure of which  
 27 would constitute an unwarranted invasion of the affected individuals' constitutional,  
 28 statutory and/or common law rights to personal privacy and confidentiality. NEW



1 further objects to this Request to the extent that it seeks private, privileged, and  
 2 confidential commercial, financial, and/or proprietary business information. NEW  
 3 further objects to this Request as premature to the extent that it seeks documents  
 4 that relate to the merits of Plaintiff's claims rather than to class discovery. NEW  
 5 further objects to this Request to the extent that Defendant Gateway has already  
 6 agreed to produce all responsive, non-privileged and relevant documents in its  
 7 possession, custody, or control. NEW further objects to this Request on the ground  
 8 that it is under a contractual obligation to keep such agreements confidential.

9 Subject to and without in any way waiving the foregoing general and specific  
 10 objections and responses, and to the extent NEW understands this Request, NEW  
 11 will produce the operative written agreements between NEW, Gateway and/or  
 12 eMachines after the Court enters a suitable Protective Order that protects such  
 13 documents from public disclosure.

14 **(c) Movant's Argument**

15 See Movant's Argument in support of Request No. 1, *supra* at III.A.1.c.

16 **(d) NEW's Argument**

17 See Respondent's Argument in opposition to Request No. 1, *supra* at  
 18 IV.A.1.d.

19 *Further response:* Despite Plaintiff's failure to first seek these agreements  
 20 from named defendant Gateway, NEW voluntarily produced all of the operative  
 21 agreements between NEW and Gateway. (Stover Decl., at ¶ 3.) One such operative  
 22 agreement is the RSCAA, which unambiguously states that "NEW engages  
 23 Gateway to perform its obligations" under the Service Contract Administration  
 24 Agreement, including administering the warranty service program and handling  
 25 claims. (Stover Decl., Ex. "A", ¶ B.) NEW believes its production of the operative  
 26 agreements satisfies its Rules 16 and 45 obligations and clearly sets forth the  
 27 contractual relationship between NEW and Gateway relative to the warranty service  
 28 program.

1                   **(3) Request and Response No. 3**

2                   **(a) Request No. 3**

3           All documents concerning any contracts, agreements, or understandings,  
4 whether formal or informal, between NEW and any other persons concerning  
5 Gateway Warranties, including, without limitation, concerning any obligation or  
6 duty to provide service under any Gateway Warranty.

7                   **(b) Response and Objection to Request No. 3**

8           In addition to its General Objections, NEW objects to this Request on the  
9 ground that it is vague and ambiguous as to the terms "informal", "understandings",  
10 "provide service" and "any other persons." NEW further objects to this Request as  
11 overly broad and unduly burdensome and oppressive, to the extent that it seeks all  
12 documents regarding contractual relationships between every Gateway Warranty  
13 purchaser and NEW. NEW further objects to this Request to the extent that it seeks  
14 information protected by the attorney-client privilege and/or attorney work product  
15 doctrine. NEW further objects to this Request to the extent that it seeks information  
16 pertaining to individuals, the disclosure of which would constitute an unwarranted  
17 invasion of the affected individuals' constitutional, statutory and/or common law  
18 rights to personal privacy and confidentiality. NEW further objects to this Request to  
19 the extent that that it seeks private, privileged, and confidential commercial,  
20 financial, and/or proprietary business information. NEW further objects to this  
21 Request as premature to the extent that it seeks documents that relate to the merits  
22 of Plaintiff's claims rather than to class discovery.

23           Subject to and without in any way waiving the foregoing general and specific  
24 objections and responses, and to the extent NEW understands this Request, NEW  
25 will produce the operative written agreements between NEW, Gateway and/or  
26 eMachines after the Court enters a suitable Protective Order that protects such  
27 documents from public disclosure.



1 **(c) Movant's Argument**

2 *See* Movant's Argument in support of Request No. 1, *supra* at III.A.1.c.

3 **(d) NEW's Argument**

4 *See* Respondent's Argument in opposition to Request No. 2, *supra* at  
5 IV.A.2.d.

6 **(4) Request and Response No. 4**

7 **(a) Request No. 4**

8 All documents concerning any contracts, agreements, or understandings,  
9 whether formal or informal, between NEW and any other person concerning the sale  
10 or resale of Gateway Warranties, including, without limitation, the right of NEW to  
11 sell or resell Gateway Warranties.

12 **(b) Response and Objection to Request No. 4**

13 In addition to its General Objections, NEW objects to this Request on the  
14 ground that it is vague and ambiguous as to the terms "informal", "understandings",  
15 "any other person", "sale or resale", "right" and "sell or resell." NEW further  
16 objects to this Request on the ground that it is overly broad as to time and scope.  
17 NEW further objects to this Request on the ground that it is unduly burdensome  
18 and oppressive, and seeks documents and information that are outside the scope of  
19 this action and are not likely to lead to the discovery of admissible evidence. NEW  
20 further objects to this Request to the extent that it seeks information protected by  
21 the attorney-client privilege and/or attorney work product doctrine. NEW further  
22 objects to this Request to the extent that it seeks private, privileged, and  
23 confidential commercial, financial, and/or proprietary business information. NEW  
24 further objects to this Request as premature to the extent that it seeks documents that  
25 relate to the merits of Plaintiff's claims rather than to class discovery.

26 Subject to and without in any way waiving the foregoing general and specific  
27 objections and responses, and to the extent NEW understands this Request, NEW  
28 will produce the operative written agreements between NEW, Gateway and/or

1 eMachines after the Court enters a suitable Protective Order that protects such  
2 documents from public disclosure.

3 **(c) Movant's Argument**

4 *See* Movant's Argument in support of Request No. 1, *supra* at III.A.1.c.

5 **(d) NEW's Argument**

6 *See* Respondent's Argument in opposition to Request No. 2, *supra* at  
7 IV.A.2.d.

8 **(5) Request and Response No. 5**

9 **(a) Request No. 5**

10 All documents concerning communications between NEW and Gateway,  
11 including, without limitation, concerning (1) Gateway Warranties; (2) the identity of  
12 any person who owned, sold, resold, or was legally responsible for honoring the  
13 Gateway Warranties; (3) failure, refusal, or inability of any person to honor any  
14 Gateway Warranties; (4) Wilson; (5) the Warranty Telephone Numbers;  
15 (6) disconnection or lack of service of the Warranty Telephone Numbers; and  
16 (7) Wilson v. Gateway.

17 **(b) Response and Objection to Request No. 5**

18 In addition to its General Objections, NEW objects to this Request on the  
19 ground that it is vague and ambiguous as to the terms "honor(ing)" and "lack of  
20 service." NEW further objects to this Request on the ground that it is overly broad  
21 as to time and scope. NEW further objects to this Request on the ground that it is  
22 unduly burdensome and oppressive, and seeks documents and information that are  
23 outside the scope of this action and are not likely to lead to the discovery of  
24 admissible evidence. NEW further objects to this Request on the ground that it is, at  
25 least in part, duplicative of other requests. NEW further objects to this Request to  
26 the extent that it seeks information protected by the attorney-client privilege and/or  
27 attorney work product doctrine. NEW further objects to this Request to the extent  
28 that it seeks information pertaining to individuals, the disclosure of which would

1 constitute an unwarranted invasion of the affected individuals' constitutional,  
 2 statutory and/or common law rights to personal privacy and confidentiality. NEW  
 3 further objects to this Request to the extent that it seeks private, privileged, and  
 4 confidential commercial, financial, and/or proprietary business information. NEW  
 5 further objects to this Request as premature to the extent that it seeks documents that  
 6 relate to the merits of Plaintiff's claims rather than to class discovery further objects  
 7 to this Request to the extent that Defendant Gateway has agreed to produce all  
 8 responsive, non-privileged email communications between Gateway and NEW  
 9 concerning any Extended Service Plan sold and held by NEW.

10 Subject to and without in any way waiving the foregoing general and  
 11 specific objections and responses, and to the extent NEW understands this Request,  
 12 NEW will produce the operative written agreements between NEW, Gateway and/or  
 13 eMachines after the Court enters a suitable Protective Order that protects such  
 14 documents from public disclosure.

15 **(c) Movant's Argument**

16 *See* Movant's Argument in support of Request No. 1, *supra* at III.A.1.c.

17 **(d) NEW's Argument**

18 *See* Respondent's Argument in opposition to Request No. 2, *supra* at  
 19 IV.A.2.d.

20 **(6) Request and Response No. 13**

21 **(a) Request No. 13**

22 All documents concerning the identity of any person who offered for sale,  
 23 sold, or resold, or was authorized to offer to sell, sell or resell, any Gateway  
 24 Warranty.

25 **(b) Response and Objection to Request No. 13**

26 In addition to its General Objections, NEW objects to this Request on the  
 27 ground that it is vague and ambiguous as to the phrases "offered for sale" and "any  
 28 person who." NEW further objects to this Request on the ground that it is overly

1 broad as to time and scope. NEW further objects to this Request on the ground that  
 2 it is unduly burdensome and oppressive, and seeks documents and information that  
 3 are outside the scope of this action and are not likely to lead to the discovery of  
 4 admissible evidence. NEW further objects to this Request on the ground that it is, at  
 5 least in part, duplicative of other requests. NEW further objects to this Request to  
 6 the extent that it seeks information protected by the attorney-client privilege and/or  
 7 attorney work product doctrine. NEW further objects to this Request on the ground  
 8 that it seeks information pertaining to individuals, the disclosure of which would  
 9 constitute an unwarranted invasion of the affected individuals' constitutional,  
 10 statutory and/or common law rights to personal privacy and confidentiality. NEW  
 11 further objects to this Request on the ground that it seeks private, privileged, and  
 12 confidential commercial, financial, and/or proprietary business information. NEW  
 13 further objects to this Request as premature to the extent that it seeks documents that  
 14 relate to the merits of Plaintiff's claims rather than to class discovery. NEW further  
 15 objects to this Request to the extent that Defendant Gateway has already agreed to  
 16 produce all responsive, non- privileged and relevant documents concerning the  
 17 identity of any person who offered for sale, sold, or resold, or was authorized to  
 18 offer to sell, sell, or resell any Extended Service Plan from January 1, 2005 to the  
 19 present in its possession, custody, or control.

20           Subject to and without in any way waiving the foregoing general and  
 21 specific objections and responses, and to the extent NEW understands this Request,  
 22 NEW will produce the operative written agreements between NEW, Gateway and/or  
 23 eMachines after the Court enters a suitable Protective Order that protects such  
 24 documents from public disclosure.

25                           **(c)   Movant's Argument**

26           *See* Movant's Argument in support of Request No. 1, *supra* at III.A.1.c.  
 27  
 28

1 (d) NEW's Argument

2 See Respondent's Argument in opposition to Request Nos. 1 and 2, *supra* at  
3 IV.A.1.d. and IV.A.2.d.

4 ///

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6 ///

7 **B. Requests and Responses Nos. 12, 14, 15, 16, 17, 27, 28, 29, 30, 31, 33,**  
8 **34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53,**  
9 **54, 55, and 56**

10 NEW objects to these 33 Requests on the ground that Gateway already has  
11 produced this information to Plaintiff or can more expeditiously do so. NEW  
12 further objects to Requests Nos. 27-41 and 43-56, on the ground that they relate to  
13 the merits of Plaintiff's claims rather than to class discovery and are thus premature.

14 (1) Request and Response No. 12

15 (a) Request No. 12

16 Exemplars of each form of agreement or contract underlying the Gateway  
17 Warranties, and for each, documents sufficient to show the time period during which  
18 each such agreement or contract was used.

19 (b) Response and Objection to Request No. 12

20 In addition to its General Objections, NEW objects to this Request on the  
21 ground that it is vague and ambiguous as to the terms "each form of agreement",  
22 "underlying", and "was used." NEW further objects to this Request on the ground  
23 that it is overly broad as to time and scope. NEW further objects to this Request on  
24 the ground that it is unduly burdensome and oppressive, and seeks documents and  
25 information that are outside the scope of this action and are not likely to lead to the  
26 discovery of admissible evidence. NEW further objects to this Request to the extent  
27 that it seeks information protected by the attorney-client privilege and/or attorney  
28 work product doctrine. NEW further objects to this Request to the extent that it

1 seeks private, privileged, and confidential commercial, financial, and/or proprietary  
2 business information. NEW further objects to this Request as premature to the  
3 extent that it seeks documents that relate to the merits of Plaintiff's claims rather  
4 than to class discovery. NEW further objects to this Request to the extent that  
5 Defendant Gateway has already agreed to produce exemplars of each form of  
6 agreement or contract underlying any Extended Service Plan during the period of  
7 January 1, 2005 to the present.

8 Subject to and without in any way waiving the foregoing general and specific  
9 objections and responses, and to the extent NEW understands this Request, NEW  
10 will produce any non-duplicative, non-privileged documents or material responsive  
11 to this Request, that NEW can locate after conducting a diligent search and  
12 reasonable inquiry, and that are within NEW's possession, custody, or control, after  
13 the Court enters a suitable Protective Order that protects such documents from  
14 public disclosure.

15 **(c) Movant's Argument**

16 As an initial matter, NEW's objection that it is relieved from any obligation to  
17 produce documents as a result of its status as a non-party is likely moot by virtue of  
18 Gateway's Motion for Leave to File a Third-Party Complaint joining NEW in this  
19 action. To the extent the Court grants the unopposed motion, NEW's dilatory  
20 refusal to produce responsive documents only serves to place in jeopardy the  
21 Court's August 2, 2010 Scheduling Order. Additionally, NEW's insistence on the  
22 filing of this motion to compel, with knowledge that it is soon to be a party to the  
23 litigation, wastes judicial resources and imposes on Plaintiff unnecessary costs and  
24 expenses—warranting sanctions.

25 Further, Gateway has not, in fact, produced documents responsive to this  
26 Request, thus undermining NEW's unilateral contention that such documents have  
27 been produced or are more readily accessible to Gateway. Additionally, counsel for  
28 both Gateway and NEW expressly have disclaimed any agreement between them to

1 produce documents responsive to Plaintiff's Requests. *See* O'Brien Decl., Exh. B  
 2 (Stover Ltr. at 3, n.1); *see also* O'Brien Decl., Exh. D (Email from Paul F. Rafferty  
 3 to Robyn C. Crowther, dated July 26, 2010 ("Gateway and NEW have no agreement  
 4 on production, nor have there been any discussions in that regard.... In short,  
 5 nothing Gateway is doing is intended to cover what NEW was otherwise obligated  
 6 to produce under the subpoena.")). NEW is in no position to know what Gateway  
 7 has produced, has readily accessible, or may have turned over to MPC (thus placing  
 8 it outside Gateway's possession, custody, or control) when it sold GCI. NEW must  
 9 satisfy its obligations under the June 2010 subpoena and cease its attempt to rely on  
 10 another party to meet its discovery obligations.

11 Finally, NEW's objection that this Request is premature is without merit.  
 12 NEW's own attempt to allocate to Gateway all responsibility for providing Service  
 13 under the ESP warranties has placed the issue of NEW's role in this litigation at  
 14 center stage. This Request does not go to the merits of Plaintiff's claims but is  
 15 instead plainly targeted to ascertaining NEW's obligations in servicing the ESP  
 16 warranties vis-a-vis the putative class and other corporate entities, including other  
 17 (likely) third-party defendants. NEW's obligations under the SCAA and Reverse  
 18 SCAA, and its responsibilities and course of conduct in regards to the putative class,  
 19 are of paramount importance to Plaintiff's ability to demonstrate both commonality  
 20 and typicality. *See* Fed. R. Civ. P. 23(a)(2) and (3); *see also Blackie v. Barrack*, 524  
 21 F.2d 891, 902 (9th Cir. 1975) (the requirement of commonality is satisfied where  
 22 "the class is united by a common interest in determining whether a defendant's  
 23 course of conduct is in its broad outlines actionable") (emphasis added).

24 In addition to acknowledging the primacy of its role in this litigation through  
 25 the production of what NEW admits are the "operative written agreements," NEW  
 26 has further conceded that it has in its possession documents relating specifically to  
 27 Plaintiff Wilson. *See* O'Brien Decl., Exh. C (Email from Geoffrey T. Stover to  
 28 Joshua S. Bauchner, dated August 27, 2010). NEW's possession of documents



1 relating to Plaintiff Wilson and, by extension, other putative class members, are  
 2 plainly relevant to Plaintiff's motion for class certification and should be timely  
 3 produced. *See* Fed. R. Civ. P. 23(a)(1)-(3); *see also General Tel. Co. of the*  
 4 *Southwest v. Falcon*, 457 U.S. 147, 155 (1982) (finding class certification  
 5 "'peculiarly appropriate' when the 'issues involved are common to the class as a  
 6 whole' and when they 'turn on questions of law applicable in the same manner to  
 7 each member of the class'" (quoting *Califano v. Yamasaki*, 442 U.S. 682, 701  
 8 (1979)); *Doe v. Los Angeles Unified School Dist.*, 48 F. Supp. 2d 1233, 1245 (C.D.  
 9 Cal. 1999) (Rule 23(a)(3)'s typicality requirement is satisfied where "the action can  
 10 be efficiently maintained as a class and [] the named plaintiffs have incentives that  
 11 align with those of absent class members so ... that the absentees' interests will be  
 12 fairly represented") (citation omitted).

13 **(d) NEW's Argument**

14 *See* Respondent's Argument in opposition to Request No. 2, *supra* at  
 15 IV.A.2.d. Moreover, NEW's objection to this request on the grounds that Gateway  
 16 has already agreed to produce, or could more easily produce, these documents is not,  
 17 as Plaintiff suggests, an attempt to escape its discovery obligations. It is, rather, a  
 18 proper expression of NEW's intent to act in accordance with its obligations under  
 19 Rules 16 and 45 and the ample Ninth Circuit precedent that supports it. *Moon*, 232  
 20 F.R.D. at 638. Plaintiff has not, because he cannot, cite relevant authority for the  
 21 unsupported proposition that it is NEW's burden to "know what Gateway has  
 22 produced" or "has readily accessible." Rather, the onus is on Plaintiff to  
 23 demonstrate that he has taken affirmative steps to obtain relevant documents from  
 24 Gateway before seeking such documents from non-party NEW. *See id.* ("Since  
 25 plaintiffs have not shown they have attempted to obtain these documents from  
 26 defendant, the Court finds that, at this time, requiring nonparty ... to produce these  
 27 documents is an undue burden . . .").

28



1 Plaintiff's additional argument that NEW may soon become a party to the  
 2 litigation and that it cannot, therefore, maintain its Rule 45-based objections is  
 3 simply incorrect. At all times, including during the pendency of this motion to  
 4 compel, NEW has been a non-party to the action and has acted pursuant to its  
 5 obligations under Rule 45 and the case law that interprets it. In any event,  
 6 Plaintiff's discovery requests are overly broad, whether propounded on a party or a  
 7 non-party.

8 **(2) Request and Response No. 14**

9 **(a) Request No. 14**

10 All documents concerning the identity of any person who owned any  
 11 Gateway Warranties.

12 **(b) Response and Objection to Request No. 14.**

13 In addition to its General Objections, NEW objects to this Request on the  
 14 ground that it is vague and ambiguous as to the term "identity." NEW further objects  
 15 to this Request on the ground that it is overly broad as to time and scope. NEW  
 16 further objects to this Request on the ground that it is unduly burdensome and  
 17 oppressive, and seeks documents and information that are outside the scope of this  
 18 action and are not likely to lead to the discovery of admissible evidence. NEW  
 19 further objects to this Request on the ground that it is, at least in part, duplicative of  
 20 other requests. NEW further objects to this Request to the extent that it seeks  
 21 information protected by the attorney-client privilege and/or attorney work product  
 22 doctrine. NEW further objects to this Request on the ground that it seeks  
 23 information pertaining to individuals, the disclosure of which would constitute an  
 24 unwarranted invasion of the affected individuals' constitutional, statutory and/or  
 25 common law rights to personal privacy and confidentiality. NEW further objects to  
 26 this Request on the ground that it seeks private, privileged, and confidential  
 27 commercial, financial, and/or proprietary business information. NEW further objects  
 28 to this Request to the extent that Defendant Gateway has already agreed to produce

1 all responsive, non- privileged and relevant documents concerning the identity of  
 2 any person who owned an active Extended Service Plan on or active as of  
 3 November 6, 2008 in its possession, custody, or control.

4 **(c) Movant's Argument**

5 *See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

6 **(d) NEW's Argument**

7 *See* Respondent's Argument in opposition to Request No. 12, *supra* at  
 8 IV.B.1.d.

9 *Further response:* NEW maintains its objection that Gateway is the original  
 10 retailer of all ESP's, administers the service contract program, and generates all  
 11 customer data records and that, therefore, Plaintiff is first required to seek  
 12 responsive documents from Gateway. This request is also grossly overbroad and  
 13 overinclusive because putative class members in this action include only Gateway  
 14 ESP holders who unsuccessfully sought warranty service, but this request seeks  
 15 identifying information regarding *every* ESP holder, regardless of claim status. *See*  
 16 Respondent's Argument in opposition to Request No. 1, *supra* at IV.A.1.d.

17 The burden imposed by this request is particularly onerous because locating  
 18 responsive documents in NEW's database of sales files and claims files would  
 19 require a "massive data pull" of records relative to approximately 1.9 million  
 20 customer contracts. (Danoff Decl., at ¶ 10.) Specifically, each customer's sales file  
 21 contains records of (i) customer demographics; (ii) warranty information; (iii) date  
 22 of purchase; and (iv) product information. (*Id.*) Moreover, each customer's claim  
 23 file contains (i) a unique contract identifier; (ii) date of failure; (iii) type of failure;  
 24 and (iv) dollar amount of the claim. (*Id.*) It will take hundreds, if not thousands, of  
 25 hours for NEW to cull these sales and claims documents, and NEW will incur  
 26 significant additional expense to review such documents for privilege and  
 27 confidentiality. (*Id.* at ¶ 11.) Consequently, the potential benefit to Plaintiff is  
 28 minimal compared to the significant burden that will surely be placed on NEW,

1 especially given the fact that Gateway generated and maintained all customer data  
2 and records in the first instance. *See Gonzalez*, 234 F.R.D. at 680.

3 ///

4 ///

5 ///

### 6 (3) Request and Response No. 15

#### 7 (a) Request No. 15

8 Documents sufficient to identify on a monthly basis, each sale of a Gateway  
9 Warranty, including, without limitation, the date of purchase, the purchaser, the  
10 amount paid, the term of the Gateway Warranty, the date of expiration of the  
11 Gateway Warranty, the seller of the Gateway Warranty, the obligor of the Gateway  
12 Warranty, and the form of warranty agreement used in that transaction.

#### 13 (b) Response and Objection to Request No. 15

14 In addition to its General Objections, NEW objects to this Request on the  
15 ground that it is vague and ambiguous as to the terms "form of warranty agreement"  
16 and "transaction." NEW further objects to this Request on the ground that it is  
17 overly broad as to time and scope. NEW further objects to this Request on the  
18 ground that it is unduly burdensome and oppressive, and seeks documents and  
19 information that are outside the scope of this action and are not likely to lead to the  
20 discovery of admissible evidence. NEW further objects to this Request on the  
21 ground that it is, at least in part, duplicative of other requests. NEW further objects to  
22 this Request to the extent that it seeks information protected by the attorney-client  
23 privilege and/or attorney work product doctrine. NEW further objects to this Request  
24 on the ground that it seeks information pertaining to individuals, the disclosure of  
25 which would constitute an unwarranted invasion of the affected individuals'  
26 constitutional, statutory and/or common law rights to personal privacy and  
27 confidentiality. NEW further objects to this Request to the extent that it seeks  
28 private, privileged, and confidential commercial, financial, and/or proprietary

1 business information. NEW further objects to this Request to the extent that  
 2 Defendant Gateway has already agreed to produce all responsive, non-privileged and  
 3 relevant documents concerning the identity of any person who owned an active  
 4 Extended Service Plan on or active as of November 6, 2008 in its possession,  
 5 custody, or control.

6 **(c) Movant's Argument**

7 See Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

8 **(d) NEW's Argument**

9 See Respondent's Argument in opposition to Request No. 14, *supra* at  
 10 IV.B.2.d.

11 **(4) Request and Response No. 16**

12 **(a) Request No. 16**

13 Documents sufficient to identify on a monthly basis, persons holding  
 14 Gateway Warranties as to which the warranty term has not yet expired, including,  
 15 without limitation, the remaining term on any such warranty.

16 **(b) Response and Objection to Request No. 16**

17 In addition to its General Objections, NEW objects to this Request on the  
 18 ground that it is overly broad as to time and scope. NEW further objects to this  
 19 Request on the ground that it is unduly burdensome and oppressive, and seeks  
 20 documents and information that are outside the scope of this action and are not  
 21 likely to lead to the discovery of admissible evidence. NEW further objects to this  
 22 Request on the ground that it is, at least in part, duplicative of other requests. NEW  
 23 further objects to this Request to the extent that it seeks information protected by the  
 24 attorney-client privilege and/or attorney work product doctrine. NEW further objects  
 25 to this Request on the ground that it seeks information pertaining to individuals, the  
 26 disclosure of which would constitute an unwarranted invasion of the affected  
 27 individuals' constitutional, statutory and/or common law rights to personal privacy  
 28 and confidentiality. NEW further objects to this Request on the ground that it seeks

1 private, privileged, and confidential commercial, financial, and/or proprietary  
 2 business information. NEW further objects to this Request to the extent that Plaintiff  
 3 already has access to such information or can more expeditiously acquire it from  
 4 Defendant Gateway.

5 **(c) Movant's Argument**

6 *See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

7 **(d) NEW's Argument**

8 *See* Respondent's Argument in opposition to Requests No. 1, *supra* at  
 9 IV.A.1.d and Request No. 14, *supra* at IV.B.2.d.

10 *Further response:* This request would impose a particularly onerous burden  
 11 on NEW because customer warranty records, including records of warranty claims,  
 12 remain in NEW's databases for a minimum of seven years and are not parsed into  
 13 separate databases once expired or fulfilled. (Danoff Decl., ¶ 9.) Consequently,  
 14 running queries for responsive documents would be time-consuming and expensive  
 15 because a search for records of unexpired or unfulfilled warranties would require the  
 16 review of approximately 1.9 million warranty contracts, including previously  
 17 expired or fulfilled ESP's and those outside the temporal scope of this action. (*Id.*,  
 18 ¶¶ 7, 9.)

19 **(5) Request and Response No. 17**

20 **(a) Request No. 17**

21 Documents sufficient to identify, on a purchaser-by-purchaser basis, the date  
 22 on which any Gateway Warranty expired or expires.

23 **(b) Response and Objection to Request No. 17**

24 In addition to its General Objections, NEW objects to this Request on the  
 25 ground that it is overly broad as to time and scope. NEW further objects to this  
 26 Request on the ground that it is unduly burdensome and oppressive, and seeks  
 27 documents and information that are outside the scope of this action and are not  
 28 likely to lead to the discovery of admissible evidence. NEW further objects to this

Request on the ground that it is, at least in part, duplicative of other requests. NEW further objects to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. NEW further objects to this Request on the ground that it seeks information pertaining to individuals, the disclosure of which would constitute an unwarranted invasion of the affected individuals' constitutional, statutory and/or common law rights to personal privacy and confidentiality. NEW further objects to this Request on the ground that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information. NEW further objects to this Request to the extent that Plaintiff already has access to such information or can more expeditiously acquire it from Defendant Gateway.

**(c) Movant's Argument**

See Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

**(d) NEW's Argument**

See Respondent's Argument in opposition to Request No. 16, *supra* at IV.B.4.d.

**(6) Request and Response No. 27**

**(a) Request No. 27**

All documents concerning any Warranty Telephone Number.

**(b) Response and Objection to Request No. 27**

In addition to its General Objections, NEW objects to this Request on the ground that it is vague and ambiguous as to the term "any Warranty Telephone Number." NEW further objects to this Request on the ground that it is overly broad as to time and scope. NEW further objects to this Request on the ground that it is unduly burdensome and oppressive, and seeks documents and information that are outside the scope of this action and are not likely to lead to the discovery of admissible evidence. NEW further objects to this Request on the ground that it is, at least in part, duplicative of other requests. NEW further objects to this Request to

1 the extent that it seeks information protected by the attorney-client privilege and/or  
 2 attorney work product doctrine. NEW further objects to this Request to the extent that  
 3 it seeks information pertaining to individuals, the disclosure of which would  
 4 constitute an unwarranted invasion of the affected individuals' constitutional,  
 5 statutory and/or common law rights to personal privacy and confidentiality. NEW  
 6 further objects to this Request to the extent that it seeks private, privileged, and  
 7 confidential commercial, financial, and/or proprietary business information. NEW  
 8 further objects to this Request as premature to the extent that it seeks documents  
 9 that relate to the merits of Plaintiff's claims rather than to class discovery. NEW  
 10 further objects to this Request to the extent that Defendant Gateway has agreed to  
 11 produce all responsive, non-privileged and relevant documents concerning the  
 12 Warranty Telephone Number(s) related to Plaintiff's Extended Service Plan in its  
 13 possession, custody, or control.

14 **(c) Movant's Argument**

15 NEW has placed the roles it and Gateway played in selling and servicing the  
 16 ESPs squarely at issue in this litigation. Discovery concerning Gateway's and  
 17 NEW's telephonic and online customer service systems, the routing or blocking of  
 18 Service requests made to those systems, and the disposition of Service requests  
 19 made through those systems, demonstrate their course of conduct in honoring or  
 20 denying their obligations to the putative class under the ESP warranties and are  
 21 patently of paramount importance to Plaintiff's ability to demonstrate both  
 22 commonality and typicality. Fed. R. Civ. P. 23(a)(2) and (3); *see also Blackie v.*  
 23 *Barrack*, 524 F.2d 891, 902(9th Cir. 1975) (the requirement of commonality is  
 24 satisfied where "the class is united by a common interest in determining whether a  
 25 *defendant's course of conduct* is in its broad outlines actionable") (emphasis added).  
 26 *See also* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.



1 **(d) NEW's Argument**

2 This request is grossly overbroad because it will necessarily include  
 3 documents unrelated to class certification and to this litigation. *See* Respondent's  
 4 Argument in opposition to Request No. 1, *supra* at IV.A.1.d, and Request No. 14,  
 5 *supra* at IV.B.2.d. Moreover, Gateway performed all customer care functions,  
 6 including administration of the telephone and online support centers, during the  
 7 relevant period and generated all support-related records. (Danoff Decl. ¶¶ 5, 12.)  
 8 Customer care records and data have at all times been transmitted to NEW only  
 9 subsequent to their initial creation by Gateway, and NEW does not add or alter any  
 10 information sent by Gateway. (*Id.*, ¶ 5.) Consequently, Plaintiff must first seek  
 11 these documents from named defendant Gateway. *See Moon*, 232 F.R.D. at 638; *see*  
 12 *also* Respondent's Argument in opposition to Request No. 12, *supra* at IV.B.1.d.  
 13 On a more practical level, it would be exceedingly difficult – if not impossible – to  
 14 locate all communications between NEW and Gateway warranty holders that are  
 15 stored in phone logs because there are no clear identifiers which isolate incidents as  
 16 Gateway ESP-related and because such records are likely routinely purged. (Danoff  
 17 Decl. ¶ 12.)

18 Further, this request appears to be aimed at gaining information regarding  
 19 whether Gateway ESP claims were fulfilled, which is a merits-based topic which  
 20 will be properly addressed during the merits phase of discovery. For this reason,  
 21 this request is premature.

22 **(7) Request and Response No. 28**

23 **(a) Request No. 28**

24 All documents concerning the service status of any Warranty Telephone  
 25 Number, including whether such Warranty Telephone Number was in service, not in  
 26 service, or disconnected.



1 **(b) Response and Objection to Request No. 28**

2 In addition to its General Objections, NEW objects to this Request on the  
 3 ground that it is vague and ambiguous as to the terms "service status" and "any  
 4 Warranty Telephone Number." NEW further objects to this Request on the ground  
 5 that it is overly broad as to time and scope. NEW further objects to this Request on  
 6 the ground that it is unduly burdensome and oppressive, and seeks documents and  
 7 information that are outside the scope of this action and are not likely to lead to the  
 8 discovery of admissible evidence. NEW further objects to this Request on the  
 9 ground that it is, at least in part, duplicative of other requests. NEW further objects  
 10 to this Request to the extent that it seeks information protected by the attorney-client  
 11 privilege and/or attorney work product doctrine. NEW further objects to this  
 12 Request to the extent that it seeks private, privileged, and confidential commercial,  
 13 financial, and/or proprietary business information. NEW further objects to this  
 14 Request as premature to the extent that it seeks documents that relate to the merits of  
 15 Plaintiffs claims rather than to class discovery. NEW further objects to this Request  
 16 to the extent that Defendant Gateway has agreed to produce all responsive, non-  
 17 privileged and relevant documents concerning the Warranty Telephone Number(s)  
 18 related to Plaintiffs Extended Service Plan in its possession, custody, or control.

19 **(c) Movant's Argument**

20 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

21 **(d) NEW's Argument**

22 *See* Respondent's Argument in opposition to Request No. 27, *supra* at  
 23 IV.B.6.d.

24 **(8) Request and Response No. 29**

25 **(a) Request No. 29**

26 All document concerning the disconnection of any Warranty Telephone  
 27 Number.

1 **(b) Response and Objection to Request No. 29**

2 In addition to its General Objections, NEW objects to this Request on the  
 3 ground that it is vague and ambiguous as to the terms "disconnection" and "any  
 4 Warranty Telephone Number." NEW further objects to this Request on the ground  
 5 that it is overly broad as to time and scope. NEW further objects to this Request on  
 6 the ground that it is unduly burdensome and oppressive, and seeks documents and  
 7 information that are outside the scope of this action and are not likely to lead to the  
 8 discovery of admissible evidence. NEW further objects to this Request on the  
 9 ground that it is, at least in part, duplicative of other requests. NEW further objects  
 10 to this Request to the extent that it seeks information protected by the attorney-client  
 11 privilege and/or attorney work product doctrine. NEW further objects to this  
 12 Request to the extent that it seeks private, privileged, and confidential commercial,  
 13 financial, and/or proprietary business information. NEW further objects to this  
 14 Request as premature to the extent that it seeks documents that relate to the merits of  
 15 Plaintiff's claims rather than to class discovery. NEW further objects to this Request  
 16 to the extent that Defendant Gateway has agreed to produce all responsive, non-  
 17 privileged and relevant documents concerning the Warranty Telephone Number(s)  
 18 related to Plaintiff's Extended Service Plan in its possession, custody, or control.

19 **(c) Movant's Argument**

20 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

21 **(d) NEW's Argument**

22 *See* Respondent's Argument in opposition to Request No. 27, *supra* at  
 23 IV.B.6.d.

24 **(9) Request and Response No. 30**

25 **(a) Request No. 30**

26 All documents concerning any period of time during which any Warranty  
 27 Telephone Number was not in service or was disconnected, including, without  
 28

1 limitation, the reasons why such number was not in service or was disconnected,  
2 and the time periods involved.

3 **(b) Response and Objection to Request No. 30**

4 In addition to its General Objections, NEW objects to this Request on the  
5 ground that it is vague and ambiguous as to the terms "disconnected" and "any  
6 Warranty Telephone Number." NEW further objects to this Request on the ground  
7 that it is overly broad as to time and scope. NEW further objects to this Request on  
8 the ground that it is unduly burdensome and oppressive, and seeks documents and  
9 information that are outside the scope of this action and are not likely to lead to the  
10 discovery of admissible evidence. NEW further objects to this Request on the  
11 ground that it is, at least in part, duplicative of other requests. NEW further objects  
12 to this Request to the extent that it seeks information protected by the attorney-client  
13 privilege and/or attorney work product doctrine. NEW further objects to this  
14 Request to the extent that it seeks private, privileged, and confidential commercial,  
15 financial, and/or proprietary business information. NEW further objects to this  
16 Request as premature to the extent that it seeks documents that relate to the merits of  
17 Plaintiff's claims rather than to class discovery. NEW further objects to this Request  
18 to the extent that Defendant Gateway has agreed to produce all responsive, non-  
19 privileged and relevant documents concerning the Warranty Telephone Number(s)  
20 related to Plaintiff's Extended Service Plan in its possession, custody, or control.

21 **(c) Movant's Argument**

22 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

23 **(d) NEW's Argument**

24 *See* Respondent's Argument in opposition to Request No. 27, *supra* at  
25 IV.B.6.d.  
26  
27  
28

1                   **(10) Request and Response No. 31**

2                   **(a) Request No. 31**

3                   All documents concerning any request for Warranty Services under any  
4 Gateway Warranty.

5                   **(b) Response and Objection to Request No. 31**

6                   In addition to its General Objections, NEW objects to this Request on the  
7 ground that it is vague and ambiguous as to the terms "request" and "Warranty  
8 Services." NEW further objects to this Request on the ground that it is overly broad  
9 as to time and scope. NEW further objects to this Request on the ground that it is  
10 unduly burdensome and oppressive, and seeks documents and information that are  
11 outside the scope of this action and are not likely to lead to the discovery of  
12 admissible evidence. NEW further objects to this Request on the ground that it is, at  
13 least in part, duplicative of other requests. NEW further objects to this Request to  
14 the extent that it seeks information protected by the attorney-client privilege and/or  
15 attorney work product doctrine. NEW further objects to this Request to the extent  
16 that it seeks information pertaining to individuals, the disclosure of which would  
17 constitute an unwarranted invasion of the affected individuals' constitutional,  
18 statutory and/or common law rights to personal privacy and confidentiality. NEW  
19 further objects to this Request to the extent that it seeks private, privileged, and  
20 confidential commercial, financial, and/or proprietary business information.

21                   NEW further objects to this Request as premature to the extent that it seeks  
22 documents that relate to the merits of Plaintiffs claims rather than to class discovery.  
23 NEW further objects to this Request to the extent that Plaintiff already has access to  
24 such information or can more expeditiously acquire it from Defendant Gateway.

25                   **(c) Movant's Argument**

26                   See Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

1 **(d) NEW's Argument**

2 *See* Respondent's Argument in opposition to Requests No. 1, *supra* at  
3 IV.A.1.d, Request No. 14, *supra* at IV.B.2.d, and Request No. 27, *supra* at IV.B.6.d.

4 **(11) Request and Response No. 33**

5 **(a) Request No. 33**

6 All documents concerning any Telephone Support Request.

7 **(b) Response and Objection to Request No. 33**

8 In addition to its General Objections, NEW objects to this Request on the  
9 ground that it is vague and ambiguous as to the term "Telephone Support Request."  
10 NEW further objects to this Request on the ground that it is overly broad as to time  
11 and scope. NEW further objects to this Request on the ground that it is unduly  
12 burdensome and oppressive, and seeks documents and information that are outside the  
13 scope of this action and are not likely to lead to the discovery of admissible evidence.  
14 NEW further objects to this Request on the ground that it is, at least in part, duplicative  
15 of other requests. NEW further objects to this Request to the extent that it seeks  
16 information protected by the attorney-client privilege and/or attorney work  
17 product doctrine. NEW further objects to this Request to the extent that it seeks  
18 information pertaining to individuals, the disclosure of which would constitute an  
19 unwarranted invasion of the affected individuals' constitutional, statutory and/or  
20 common law rights to personal privacy and confidentiality. NEW further objects  
21 to this Request to the extent that it seeks private, privileged, and confidential  
22 commercial, financial, and/or proprietary business information.

23 NEW further objects to this Request as premature to the extent that it seeks  
24 documents that relate to the merits of Plaintiff's claims rather than to class  
25 discovery. NEW further objects to this Request to the extent that Plaintiff already  
26 has access to such information or can more expeditiously acquire it from  
27 Defendant Gateway.

1 **(c) Movant's Argument**

2 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

3 **(d) NEW's Argument**

4 *See* Respondent's Argument in opposition to Request No. 27, *supra* at  
5 IV.B.6.d.

6 **(12) Request and Response No. 34**

7 **(a) Request No. 34**

8 All documents concerning the disposition of any Telephone Support Request.

9 **(b) Response and Objection to Request No. 34**

10 In addition to its General Objections, NEW objects to this Request on the  
11 ground that it is vague and ambiguous as to the terms "disposition" and "Telephone  
12 Support Request." NEW further objects to this Request on the ground that it is overly  
13 broad as to time and scope. NEW further objects to this Request on the ground that it  
14 is unduly burdensome and oppressive, and seeks documents and information that are  
15 outside the scope of this action and are not likely to lead to the discovery of  
16 admissible evidence. NEW further objects to this Request on the ground that it is, at  
17 least in part, duplicative of other requests. NEW further objects to this Request to the  
18 extent that it seeks information protected by the attorney-client privilege and/or  
19 attorney work product doctrine. NEW further objects to this Request to the extent  
20 that it seeks information pertaining to individuals, the disclosure of which would  
21 constitute an unwarranted invasion of the affected individuals' constitutional, statutory  
22 and/or common law rights to personal privacy and confidentiality. NEW further  
23 objects to this Request to the extent that it seeks private, privileged, and  
24 confidential commercial, financial, and/or proprietary business information. NEW  
25 further objects to this Request as premature to the extent that it seeks documents that  
26 relate to the merits of Plaintiff's claims rather than to class discovery. NEW further  
27 objects to this Request to the extent that Plaintiff already has access to such  
28 information or can more expeditiously acquire it from Defendant Gateway.

1 (c) **Movant's Argument**

2 See Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

3 (d) **NEW's Argument**

4 See Respondent's Argument in opposition to Request No. 27, *supra* at  
5 IV.B.6.d.

6 (13) **Request and Response No. 35**

7 (a) **Request No. 35**

8 All documents concerning any Telephone Support Request in which Warranty  
9 Service was declined, denied or not provided, for any reason.

10 (b) **Response and Objection to Request No. 35**

11 In addition to its General Objections, NEW objects to this Request on the  
12 ground that it is vague and ambiguous as to the term "Telephone Support Request."  
13 NEW further objects to this Request on the ground that it is overly broad as to time  
14 and scope. NEW further objects to this Request on the ground that it is unduly  
15 burdensome and oppressive, and seeks documents and information that are outside  
16 the scope of this action and are not likely to lead to the discovery of admissible  
17 evidence. NEW further objects to this Request on the ground that it is, at least in  
18 part, duplicative of other requests. NEW further objects to this Request to the extent  
19 that it seeks information protected by the attorney-client privilege and/or attorney  
20 work product doctrine. NEW further objects to this Request to the extent that it  
21 seeks information pertaining to individuals, the disclosure of which would constitute  
22 an unwarranted invasion of the affected individuals' constitutional, statutory and/or  
23 common law rights to personal privacy and confidentiality. NEW further objects to  
24 this Request to the extent that it seeks private, privileged, and confidential  
25 commercial, financial, and/or proprietary business information. NEW further objects  
26 to this Request as premature to the extent that it seeks documents that relate to the  
27 merits of Plaintiff's claims rather than to class discovery. NEW further objects to  
28



1 this Request to the extent that Plaintiff already has access to such information or can  
2 more expeditiously acquire it from Defendant Gateway.

3 **(c) Movant's Argument**

4 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

5 **(d) NEW's Argument**

6 *See* Respondent's Argument in opposition to Request No. 27, *supra* at  
7 IV.B.6.d.

8 **(14) Request and Response No. 37**

9 **(a) Request No. 37**

10 All documents concerning any times in which a Telephone Support Request  
11 was made or forwarded to AIGWG, AIGWS, New Hampshire Insurance, or Illinois  
12 National Insurance.

13 **(b) Response and Objection to Request No. 37**

14 In addition to its General Objections, NEW objects to this Request on the  
15 ground that it is vague and ambiguous as to the terms "Telephone Support  
16 Requests", "times", "forwarded" and who or what entity may have made and  
17 forwarded such Telephone Support Requests. NEW further objects to this Request  
18 on the ground that it is overly broad as to time and scope. NEW further objects to  
19 this Request on the ground that it is unduly burdensome and oppressive, and seeks  
20 documents and information that are outside the scope of this action and are not  
21 likely to lead to the discovery of admissible evidence. NEW further objects to this  
22 Request on the ground that it is, at least in part, duplicative of other requests. NEW  
23 further objects to this Request to the extent that it seeks information protected by the  
24 attorney-client privilege and/or attorney work product doctrine. NEW further objects  
25 to this Request to the extent that it seeks information pertaining to individuals, the  
26 disclosure of which would constitute an unwarranted invasion of the affected  
27 individuals' constitutional, statutory and/or common law rights to personal privacy  
28 and confidentiality. NEW further objects to this Request to the extent that it seeks

1 private, privileged, and confidential commercial, financial, and/or proprietary  
 2 business information. NEW further objects to this Request as premature to the  
 3 extent that it seeks documents that relate to the merits of Plaintiff's claims rather  
 4 than to class discovery. NEW further objects to this Request on the ground that  
 5 production of this document would violate a Confidentiality Agreement between  
 6 NEW and the other parties in this Request. NEW further objects to this Request to  
 7 the extent that Plaintiff already has access to such information or can more  
 8 expeditiously acquire it from Defendant Gateway.

9 **(c) Movant's Argument**

10 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

11 **(d) NEW's Argument**

12 *See* Respondent's Argument in opposition to Request No. 27, *supra* at  
 13 IV.B.6.d. This request is also premature because it contravenes this Court's  
 14 discovery bifurcation order by seeking documents that go to the merits of Plaintiff's  
 15 claim rather than to class discovery. Plaintiff has not, because he cannot,  
 16 demonstrate that communications between NEW and any of the insurance  
 17 companies underwriting the Gateway ESP's will provide Plaintiff with information  
 18 regarding the number or identity of putative class members. Consequently, NEW  
 19 would violate the Court's discovery orders by providing responsive documents, if  
 20 any such documents exist.

21 **(15) Request and Response No. 38**

22 **(a) Request No. 38**

23 All documents concerning any communications between AIGWG, AIGWS,  
 24 New Hampshire Insurance, or Illinois National Insurance, on the one hand, and  
 25 NEW, on the other, including, without limitation, concerning any Telephone  
 26 Support Request.

1 **(b) Response and Objection to Request No. 38**

2 In addition to its General Objections, NEW objects to this Request on the  
 3 ground that it is vague and ambiguous as to the term "Telephone Support Requests."  
 4 NEW further objects to this Request on the ground that it is overly broad as to time  
 5 and scope. NEW further objects to this Request on the ground that it is unduly  
 6 burdensome and oppressive, and seeks documents and information that are outside  
 7 the scope of this action and are not likely to lead to the discovery of admissible  
 8 evidence. NEW further objects to this Request on the ground that it is, at least in  
 9 part, duplicative of other requests. NEW further objects to this Request to the extent  
 10 that it seeks information protected by the attorney-client privilege and/or attorney  
 11 work product doctrine. NEW further objects to this Request to the extent that it  
 12 seeks information pertaining to individuals, the disclosure of which would constitute  
 13 an unwarranted invasion of the affected individuals' constitutional, statutory and/or  
 14 common law rights to personal privacy and confidentiality. NEW further objects to  
 15 this Request to the extent that it seeks private, privileged, and confidential  
 16 commercial, financial, and/or proprietary business information.

17 NEW further objects to this Request as premature to the extent that it seeks  
 18 documents that relate to the merits of Plaintiffs claims rather than to class discovery.  
 19 NEW further objects to this Request on the ground that production of this document  
 20 would violate a Confidentiality Agreement between NEW and the other parties in  
 21 this Request. NEW further objects to this Request to the extent that Plaintiff already  
 22 has access to such information or can more expeditiously acquire it from Defendant  
 23 Gateway.

24 **(c) Movant's Argument**

25 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

26 **(d) NEW's Argument**

27 *See* Respondent's Argument in opposition to Request No. 27, *supra* at  
 28 IV.B.6.d and Request No. 37, *supra* at IV.B.14.d.

1                   **(16) Request and Response No. 39**

2                   **(a) Request No. 39**

3                   All documents concerning any Online Support Request.

4                   **(b) Response and Objection to Request No. 39**

5                   In addition to its General Objections, NEW objects to this Request on the  
6 ground that it is vague and ambiguous as to the term "Online Support Request."  
7 NEW further objects to this Request on the ground that it is overly broad as to time  
8 and scope. NEW further objects to this Request on the ground that it is unduly  
9 burdensome and oppressive, and seeks documents and information that are outside  
10 the scope of this action and are not likely to lead to the discovery of admissible  
11 evidence. NEW further objects to this Request on the ground that it is, at least in  
12 part, duplicative of other requests. NEW further objects to this Request to the extent  
13 that it seeks information protected by the attorney-client privilege and/or attorney  
14 work product doctrine. NEW further objects to this Request to the extent that it  
15 seeks information pertaining to individuals, the disclosure of which would constitute  
16 an unwarranted invasion of the affected individuals' constitutional, statutory and/or  
17 common law rights to personal privacy and confidentiality. NEW further objects to  
18 this Request to the extent that it seeks private, privileged, and confidential  
19 commercial, financial, and/or proprietary business information.

20                  NEW further objects to this Request as premature to the extent that it seeks  
21 documents that relate to the merits of Plaintiff's claims rather than to class  
22 discovery. NEW further objects to this Request to the extent that Defendant  
23 Gateway has agreed to produce all responsive, non- privileged and relevant  
24 documents concerning any online requests for support relating to any Extended  
25 Service Plan active as of November 6, 2008 in its possession, custody, or control.

26                  **(c) Movant's Argument**

27                  See Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

1 **(d) NEW's Argument**

2 See Respondent's Argument in opposition to Request No. 27, *supra* at  
3 IV.B.6.d.

4 **(17) Request and Response No. 40**

5 **(a) Request No. 40**

6 All documents concerning any disposition of any Online Support Request.

7 **(b) Response and Objection to Request No. 40**

8 In addition to its General Objections, NEW objects to this Request on the  
9 ground that it is vague and ambiguous as to the terms "disposition" and "Online  
10 Support Request." NEW further objects to this Request on the ground that it is  
11 overly broad as to time and scope.

12 NEW further objects to this Request on the ground that it is unduly  
13 burdensome and oppressive, and seeks documents and information that are outside  
14 the scope of this action and are not likely to lead to the discovery of admissible  
15 evidence. NEW further objects to this Request on the ground that it is, at least in  
16 part, duplicative of other requests. NEW further objects to this Request to the extent  
17 that it seeks information protected by the attorney-client privilege and/or attorney  
18 work product doctrine. NEW further objects to this Request to the extent that it  
19 seeks information pertaining to individuals, the disclosure of which would constitute  
20 an unwarranted invasion of the affected individuals' constitutional, statutory and/or  
21 common law rights to personal privacy and confidentiality. NEW further objects to  
22 this Request to the extent that it seeks private, privileged, and confidential  
23 commercial, financial, and/or proprietary business information. NEW further  
24 objects to this Request as premature to the extent that it seeks documents that relate  
25 to the merits of Plaintiff's claims rather than to class discovery. NEW further  
26 objects to this Request to the extent that Plaintiff already has access to such  
27 information or can more expeditiously acquire it from Defendant Gateway.

**(c) Movant's Argument**

*See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

**(d) NEW's Argument**

*See* Respondent's Argument in opposition to Request No. 27, *supra* at IV.B.6.d.

**(18) Request and Response No. 41**

**(a) Request No. 41**

All documents concerning any person who requested, but did not receive Warranty Service under any Gateway Warranty, including, without limitation, the reasons such Warranty Service was not provided.

**(b) Response and Objection to Request No. 41**

In addition to its General Objections, NEW objects to this Request on the ground that it is vague and ambiguous as to the term "Warranty Service." NEW further objects to this Request on the ground that it is overly broad as to time and scope. NEW further objects to this Request on the ground that it is unduly burdensome and oppressive, and seeks documents and information that are outside the scope of this action and are not likely to lead to the discovery of admissible evidence. NEW further objects to this Request on the ground that it is, at least in part, duplicative of other requests. NEW further objects to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine.

**(c) Movant's Argument**

*See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

**(d) NEW's Argument**

*See* Respondent's Argument in opposition to Request No. 1, *supra* at IV.A.1.d, Request No. 14, *supra* at IV.B.2.d, and Request No. 27, *supra* at IV.B.6.d.

1                   **(19) Request and Response No. 42**

2                   **(a) Request No. 42**

3           For any person who requested Warranty Service under any Gateway  
4   Warranty, documents sufficient to show (1) the name, address, telephone, and email  
5   address of any person requesting such service; (2) the date of the request for service;  
6   (3) to person to whom the request for service was made; (4) whether services was  
7   provide, and, if so, the nature of the service provide; and (5) if services were not  
8   provided, the reason that Warranty Service was not provided.

9                   **(b) Response and Objection to Request No. 42**

10          In addition to its General Objections, NEW objects to this Request on the  
11   ground that it is vague and ambiguous as to the term "Warranty Service." NEW  
12   further objects to this Request on the ground that it is overly broad as to time and  
13   scope. NEW further objects to this Request on the ground that it is unduly  
14   burdensome and oppressive, and seeks documents and information that are outside  
15   the scope of this action and are not likely to lead to the discovery of admissible  
16   evidence. NEW further objects to this Request on the ground that it is, at least in part,  
17   duplicative of other requests. NEW further objects to this Request to the extent that  
18   it seeks information protected by the attorney-client privilege and/or attorney work  
19   product doctrine. NEW further objects to this Request on the ground that it seeks  
20   information pertaining to individuals, the disclosure of which would constitute an  
21   unwarranted invasion of the affected individuals' constitutional, statutory and/or  
22   common law rights to personal privacy and confidentiality. NEW further objects to  
23   this Request on the ground that it seeks private, privileged, and confidential  
24   commercial, financial, and/or proprietary business information. NEW further objects  
25   to this Request to the extent that Plaintiff already has access to such information or  
26   can more expeditiously acquire it from Defendant Gateway.

27                   **(c) Movant's Argument**

28          *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.



1 **(d) NEW's Argument**

2 See Respondent's Argument in opposition to Request No. 1, *supra* at  
3 IV.A.1.d, Request No. 14, *supra* at IV.B.2.d, and Request No. 27, *supra* at IV.B.6.d.

4 **(20) Request and Response No. 43**

5 **(a) Request No. 43**

6 All documents concerning records, including, without limitation, written or  
7 electronic logs, of any requests for Warranty Service under the Gateway Warranties,  
8 including, without limitation, Telephone Support Requests and Online Support  
9 Requests.

10 **(b) Response and Objection to Request No. 43**

11 In addition to its General Objections, NEW objects to this Request on the  
12 ground that it is vague and ambiguous as to the terms "Warranty Service",  
13 "Telephone Support Requests" and "Online Support Requests." NEW further objects  
14 to this Request on the ground that it is overly broad as to time and scope. NEW  
15 further objects to this Request on the ground that it is unduly burdensome and  
16 oppressive, and seeks documents and information that are outside the scope of this  
17 action and are not likely to lead to the discovery of admissible evidence. NEW  
18 further objects to this Request on the ground that it is, at least in part, duplicative of  
19 other requests. NEW further objects to this Request to the extent that it seeks  
20 information protected by the attorney-client privilege and/or attorney work product  
21 doctrine. NEW further objects to this Request on the ground that it seeks  
22 information pertaining to individuals, the disclosure of which would constitute an  
23 unwarranted invasion of the affected individuals' constitutional, statutory and/or  
24 common law rights to personal privacy and confidentiality. NEW further objects to  
25 this Request on the ground that it seeks private, privileged, and confidential  
26 commercial, financial, and/or proprietary business information. NEW further objects  
27 to this Request as premature to the extent that it seeks documents that relate to the  
28 merits of Plaintiff's claims rather than to class discovery. NEW further objects to

1 this Request to the extent that Plaintiff already has access to such information or can  
2 more expeditiously acquire it from Defendant Gateway.

3 **(c) Movant's Argument**

4 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

5 **(d) NEW's Argument**

6 *See* Respondent's Argument in opposition to Request No. 1, *supra* at  
7 IV.A.1.d, Request No. 14, *supra* at IV.B.2.d, and Request No. 27, *supra* at IV.B.6.d.

8 **(21) Request and Response No. 44**

9 **(a) Request No. 44**

10 All documents concerning the failure, refusal, unwillingness, or inability of  
11 any party to provide requested Warranty Service or honor the Gateway Warranties.

12 **(b) Response and Objection to Request No. 44**

13 In addition to its General Objections, NEW objects to this Request on the  
14 ground that it is vague and ambiguous as to the terms "Warranty Service" and  
15 "honor." NEW further objects to this Request on the ground that it is overly broad as  
16 to time and scope. NEW further objects to this Request on the ground that it is  
17 unduly burdensome and oppressive, and seeks documents and information that are  
18 outside the scope of this action and are not likely to lead to the discovery of  
19 admissible evidence. NEW further objects to this Request on the ground that it is, at  
20 least in part, duplicative of other requests. NEW further objects to this Request to  
21 the extent that it seeks information protected by the attorney-client privilege and/or  
22 attorney work product doctrine. NEW further objects to this Request to the extent  
23 that it seeks information pertaining to individuals, the disclosure of which would  
24 constitute an unwarranted invasion of the affected individuals' constitutional,  
25 statutory and/or common law rights to personal privacy and confidentiality. NEW  
26 further objects to this Request on the ground that it seeks private, privileged, and  
27 confidential commercial, financial, and/or proprietary business information.

1 NEW further objects to this Request as premature to the extent that it seeks  
 2 documents that relate to the merits of Plaintiff's claims rather than to class  
 3 discovery. NEW further objects to this Request to the extent that Defendant  
 4 Gateway has agreed to produce all non-privileged, responsive, and relevant  
 5 documents concerning the failure, refusal, unwillingness or inability of any person  
 6 to provide requested warranty service or honor any Extended Service Plan active as  
 7 of November 6, 2008 in its possession, custody, or control.

8 **(c) Movant's Argument**

9 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

10 **(d) NEW's Argument**

11 *See* Respondent's Argument in opposition to Request No. 1, *supra* at  
 12 IV.A.1.d, Request No. 14, *supra* at IV.B.2.d, and Request No. 27, *supra* at IV.B.6.d.

13 **(22) Request and Response No. 45**

14 **(a) Request No. 45**

15 All documents concerning the honor of any Gateway Warranties by NEW.

16 **(b) Response and Objection to Request No. 45**

17 In addition to its General Objections, NEW objects to this Request on the  
 18 ground that it is vague and ambiguous as to the term "honor." NEW further objects  
 19 to this Request on the ground that it is overly broad as to time and scope. NEW  
 20 further objects to this Request on the ground that it is unduly burdensome and  
 21 oppressive, and seeks documents and information that are outside the scope of this  
 22 action and are not likely to lead to the discovery of admissible evidence. NEW  
 23 further objects to this Request on the ground that it is, at least in part, duplicative of  
 24 other requests. NEW further objects to this Request to the extent that it seeks  
 25 information protected by the attorney-client privilege and/or attorney work product  
 26 doctrine. NEW further objects to this Request to the extent that it seeks information  
 27 pertaining to individuals, the disclosure of which would constitute an unwarranted  
 28 invasion of the affected individuals' constitutional, statutory and/or common law

1 rights to personal privacy and confidentiality. NEW further objects to this Request  
 2 as premature to the extent that it seeks documents that relate to the merits of  
 3 Plaintiff's claims rather than to class discovery. NEW further objects to this Request  
 4 on the ground that it seeks private, privileged, and confidential commercial,  
 5 financial, and/or proprietary business information. NEW further objects to this  
 6 Request to the extent that Defendant Gateway has agreed to produce all non-  
 7 privileged, responsive, and relevant documents in its possession, custody or control.

8 **(c) Movant's Argument**

9 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

10 **(d) NEW's Argument**

11 *See* Respondent's Argument in opposition to Request No. 1, *supra* at  
 12 IV.A.1.d, Request No. 14, *supra* at IV.B.2.d, and Request No. 27, *supra* at IV.B.6.d.

13 **(23) Request and Response No. 46**

14 **(a) Request No. 46**

15 All documents concerning NEW's intention whether or not to honor Gateway  
 16 Warranties in the future.

17 **(b) Response and Objection to Request No. 46**

18 In addition to its General Objections, NEW objects to this Request on the  
 19 ground that it is vague and ambiguous as to the terms "intention", "honor", and "in  
 20 the future." NEW further objects to this Request on the ground that it is overly broad  
 21 as to time and scope. NEW further objects to this Request on the ground that it is  
 22 unduly burdensome and oppressive, and seeks documents and information that are  
 23 outside the scope of this action and are not likely to lead to the discovery of  
 24 admissible evidence. NEW further objects to this Request on the ground that it is, at  
 25 least in part, duplicative of other requests. NEW further objects to this Request to  
 26 the extent that it seeks information protected by the attorney-client privilege and/or  
 27 attorney work product doctrine. NEW further objects to this Request to the extent  
 28 that it seeks information pertaining to individuals, the disclosure of which would

1 constitute an unwarranted invasion of the affected individuals' constitutional,  
 2 statutory and/or common law rights to personal privacy and confidentiality. NEW  
 3 further objects to this Request on the ground that it seeks private, privileged, and  
 4 confidential commercial, financial, and/or proprietary business information. NEW  
 5 further objects to this Request as premature to the extent that it seeks documents that  
 6 relate to the merits of Plaintiff's claims rather than to class discovery. NEW further  
 7 objects to this Request to the extent that Defendant Gateway has agreed to produce  
 8 all non-privileged, responsive, and relevant documents in its possession, custody or  
 9 control.

10 **(c) Movant's Argument**

11 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

12 **(d) NEW's Argument**

13 *See* Respondent's Argument in opposition to Request No. 37, *supra* at  
 14 IV.B.14.d.

15 **(24) Request and Response No. 47**

16 **(a) Request No. 47**

17 All documents concerning any complaints concerning Warranty Services  
 18 under the Gateway Warranties, including, without limitation, complaints concerning  
 19 failure, refusal, unwillingness, or inability of any person to honor Gateway  
 20 Warranties.

21 **(b) Response and Objection to Request No. 47**

22 In addition to its General Objections, NEW objects to this Request on the  
 23 ground that it is vague and ambiguous as to the terms "complaints", "Warranty  
 24 Services", and "honor." NEW further objects to this Request on the ground that it is  
 25 overly broad as to time and scope. NEW further objects to this Request on the  
 26 ground that it is unduly burdensome and oppressive, and seeks documents and  
 27 information that are outside the scope of this action and are not likely to lead to the  
 28 discovery of admissible evidence. NEW further objects to this Request on the

1 ground that it is, at least in part, duplicative of other requests. NEW further objects  
 2 to this Request to the extent that it seeks information protected by the attorney-client  
 3 privilege and/or attorney work product doctrine. NEW further objects to this  
 4 Request to the extent that it seeks information pertaining to individuals, the  
 5 disclosure of which would constitute an unwarranted invasion of the affected  
 6 individuals' constitutional, statutory and/or common law rights to personal privacy  
 7 and confidentiality. NEW further objects to this Request on the ground that it seeks  
 8 private, privileged, and confidential commercial, financial, and/or proprietary  
 9 business information. NEW further objects to this Request as premature to the  
 10 extent that it seeks documents that relate to the merits of Plaintiff's claims rather  
 11 than to class discovery. NEW further objects to this Request to the extent that  
 12 Plaintiff already has access to such information or can more expeditiously acquire it  
 13 from Defendant Gateway.

14 **(c) Movant's Argument**

15 *See* Movant's Argument in support of Request No. 27, *supra* at III.B.6.c.

16 **(d) NEW's Argument**

17 *See* Request No. 14, *supra* at IV.B.2.d, and Request No. 27, *supra* at  
 18 IV.B.6.d. Moreover, the burden on NEW in locating documents responsive to this  
 19 request would be particularly onerous. *See* Respondent's Argument in opposition to  
 20 Requests No. 1, *supra* at IV.A.1.d.

21 **(25) Request and Response No. 48**

22 **(a) Request No. 48**

23 All documents concerning the acquisition of Gateway by Acer, Inc.

24 **(b) Response and Objection to Request No. 48**

25 In addition to its General Objections, NEW objects to this Request on the  
 26 ground that it is overly broad as to time and scope. NEW further objects to this  
 27 Request on the ground that it is unduly burdensome and oppressive, and seeks  
 28 documents and information that are outside the scope of this action and are not

likely to lead to the discovery of admissible evidence. NEW further objects to this Request to the extent that it seeks information protected by the attorney-client privilege and/or attorney work product doctrine. NEW further objects to this Request to the extent that it seeks private, privileged, and confidential commercial, financial, and/or proprietary business information. NEW further objects to this Request as premature to the extent that it seeks documents that relate to the merits of Plaintiff's claims rather than to class discovery. NEW further objects to this Request to the extent that Plaintiff already has access to such information or can more expeditiously acquire it from Defendant Gateway.

**(c) Movant's Argument**

*See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

**(d) NEW's Argument**

This request underscores NEW's argument that Plaintiff's document requests are grossly overbroad. *See* Respondent's Argument in opposition to Request No. 1, *supra* at IV.A.1.d and Request No. 14, *supra* at IV.B.2.d. This request also illustrates Plaintiff's lack of care in drafting these requests. Why would NEW have documents related to Acer's acquisition of Gateway that would be relevant to this lawsuit? Finally, this request is also premature because it contravenes this Court's discovery bifurcation order by seeking documents that go to the merits of Plaintiff's claim rather than to class discovery.

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**(26) Request and Response No. 49**

**(a) Request No. 49**

All documents concerning the Gateway Professional Division, including, without limitation, Gateway Companies, Inc. ("Professional Division").



1 **(b) Response and Objection to Request No. 49**

2 In addition to its General Objections, NEW objects to this Request on the  
 3 ground that it is overly broad as to time and scope. NEW further objects to this  
 4 Request on the ground that it is unduly burdensome and oppressive, and seeks  
 5 documents and information that are outside the scope of this action and are not  
 6 likely to lead to the discovery of admissible evidence. NEW further objects to this  
 7 Request to the extent that it seeks information protected by the attorney-client  
 8 privilege and/or attorney work product doctrine. NEW further objects to this  
 9 Request to the extent that it seeks private, privileged, and confidential commercial,  
 10 financial, and/or proprietary business information. NEW further objects to this  
 11 Request as premature to the extent that it seeks documents that relate to the merits of  
 12 Plaintiff's claims rather than to class discovery. NEW further objects to this Request  
 13 to the extent that Plaintiff already has access to such information or can more  
 14 expeditiously acquire it from Defendant Gateway.

15 **(c) Movant's Argument**

16 *See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

17 **(d) NEW's Argument**

18 *See* Respondent's Argument in opposition to Request No. 48, *supra* at  
 19 IV.B.25.d.

20 **(27) Request and Response No. 50**

21 **(a) Request No. 50**

22 All documents concerning any Gateway Warranties sold or resold by the  
 23 Professional Division.

24 **(b) Response and Objection to Request No. 50**

25 In addition to its General Objections, NEW objects to this Request on the  
 26 ground that it is vague and ambiguous as to the phrase "sold or resold." NEW  
 27 further objects to this Request on the ground that it is overly broad as to time and  
 28 scope. NEW further objects to this Request on the ground that it is unduly

1 burdensome and oppressive, and seeks documents and information that are outside  
 2 the scope of this action and are not likely to lead to the discovery of admissible  
 3 evidence. NEW further objects to this Request on the ground that it is, at least in  
 4 part, duplicative of other requests. NEW further objects to this Request to the extent  
 5 that it seeks information protected by the attorney-client privilege and/or attorney  
 6 work product doctrine. NEW further objects to this Request to the extent that it  
 7 seeks information pertaining to individuals, the disclosure of which would constitute  
 8 an unwarranted invasion of the affected individuals' constitutional, statutory and/or  
 9 common law rights to personal privacy and confidentiality. NEW further objects to  
 10 this Request to the extent that it seeks private, privileged, and confidential  
 11 commercial, financial, and/or proprietary business information. NEW further objects  
 12 to this Request as premature to the extent that it seeks documents that relate to the  
 13 merits of Plaintiff's claims rather than to class discovery. NEW further objects to  
 14 this Request to the extent that Defendant Gateway has agreed to produce all non-  
 15 privileged, responsive, and relevant documents in its possession, custody, or control.

16 **(c) Movant's Argument**

17 *See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

18 **(d) NEW's Argument**

19 *See* Respondent's Argument in opposition to Request No. 48, *supra* at  
 20 IV.B.25.d.

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24 **(28) Request and Response No. 51**

25 **(a) Request No. 51**

26 All documents concerning Gateway's sale of the Professional Division to  
 27 MPC, including, without limitation, the reason, justification basis, intent, benefits,  
 28 costs, or purposes of such sale.

1 **(b) Response and Objection to Request No. 51**

2 In addition to its General Objections, NEW objects to this Request on the  
 3 ground that it is overly broad as to time and scope. NEW further objects to this  
 4 Request on the ground that it is unduly burdensome and oppressive, and seeks  
 5 documents and information that are outside the scope of this action and are not  
 6 likely to lead to the discovery of admissible evidence. NEW further objects to this  
 7 Request on the ground that it is, at least in part, duplicative of other requests. NEW  
 8 further objects to this Request to the extent that it seeks information protected by the  
 9 attorney-client privilege and/or attorney work product doctrine. NEW further objects  
 10 to this Request to the extent that it seeks private, privileged, and confidential  
 11 commercial, financial, and/or proprietary business information. NEW further objects  
 12 to this Request as premature to the extent that it seeks documents that relate to the  
 13 merits of Plaintiff's claims rather than to class discovery. NEW further objects to  
 14 this Request to the extent that Defendant Gateway has agreed to produce all non-  
 15 privileged, responsive, and relevant documents in its possession, custody, or control.

16 **(c) Movant's Argument**

17 *See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

18 **(d) NEW's Argument**

19 *See* Respondent's Argument in opposition to Request No. 48, *supra* at  
 20 IV.B.25.d.

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24 **(29) Request and Response No. 52**

25 **(a) Request No. 52**

26 All documents concerning MPC.

27

28

1 **(b) Response and Objection to Request No. 52**

2 In addition to its General Objections, NEW objects to this Request on the  
 3 ground that it is overly broad as to time and scope. NEW further objects to this  
 4 Request on the ground that it is unduly burdensome and oppressive, and seeks  
 5 documents and information that are outside the scope of this action and are not  
 6 likely to lead to the discovery of admissible evidence. NEW further objects to this  
 7 Request on the ground that it is, at least in part, duplicative of other requests. NEW  
 8 further objects to this Request to the extent that it seeks information protected by the  
 9 attorney-client privilege and/or attorney work product doctrine. NEW further objects  
 10 to this Request to the extent that it seeks private, privileged, and confidential  
 11 commercial, financial, and/or proprietary business information. NEW further objects  
 12 to this Request as premature to the extent that it seeks documents that relate to the  
 13 merits of Plaintiff's claims rather than to class discovery. NEW further objects to  
 14 this Request to the extent that Defendant Gateway has agreed to produce all non-  
 15 privileged, responsive, and relevant documents concerning the sale of Gateway's  
 16 Professional Division to MPC in its possession, custody, or control.

17 **(c) Movant's Argument**

18 *See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

19 **(d) NEW's Argument**

20 *See* Respondent's Argument in opposition to Request No. 48, *supra* at  
 21 IV.B.25.d.

22 **(30) Request and Response No. 53**

23 **(a) Request No. 53**

24 All documents concerning AIGWG, including, without limitation, documents  
 25 concerning any request for Warranty Service made to or received by AIGWG.

26 **(b) Response and Objection to Request No. 53**

27 In addition to its General Objections, NEW objects to this Request on the  
 28 ground that it is vague and ambiguous as to the terms "request", "Warranty Service",

1 and "received." NEW further objects to this Request on the ground that it is overly  
 2 broad as to time and scope. NEW further objects to this Request on the ground that  
 3 it is unduly burdensome and oppressive, and seeks documents and information that  
 4 are outside the scope of this action and are not likely to lead to the discovery of  
 5 admissible evidence. NEW further objects to this Request on the ground that it is, at  
 6 least in part, duplicative of other requests. NEW further objects to this Request to  
 7 the extent that it seeks information protected by the attorney-client privilege and/or  
 8 attorney work product doctrine. NEW further objects to this Request to the extent  
 9 that it seeks information pertaining to individuals, the disclosure of which would  
 10 constitute an unwarranted invasion of the affected individuals' constitutional,  
 11 statutory and/or common law rights to personal privacy and confidentiality. NEW  
 12 further objects to this Request to the extent that it seeks private, privileged, and  
 13 confidential commercial, financial, and/or proprietary business information. NEW  
 14 further objects to this Request as premature to the extent that it seeks documents that  
 15 relate to the merits of Plaintiff's claims rather than to class discovery. NEW further  
 16 objects to this Request to the extent that Plaintiff already has access to such  
 17 information or can more expeditiously acquire it from Defendant Gateway.

18 **(c) Movant's Argument**

19 *See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

20 **(d) NEW's Argument**

21 *See* Respondent's Argument in opposition to Request No. 48, *supra* at  
 22 IV.B.25.d.

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1                   **(31) Request and Response No. 54**

2                   **(a) Request No. 54**

3           All documents concerning AIGWS, including, without limitation, documents  
4           concerning any request for Warranty Service made to or received by AIGWS.

5                   **(b) Response and Objection to Request No. 54**

6           In addition to its General Objections, NEW objects to this Request on the  
7           ground that it is vague and ambiguous as to the terms "request", "Warranty Service",  
8           and "received." NEW further objects to this Request on the ground that it is overly  
9           broad as to time and scope. NEW further objects to this Request on the ground that  
10          it is unduly burdensome and oppressive, and seeks documents and information that  
11          are outside the scope of this action and are not likely to lead to the discovery of  
12          admissible evidence. NEW further objects to this Request on the ground that it is, at  
13          least in part, duplicative of other requests. NEW further objects to this Request to  
14          the extent that it seeks information protected by the attorney-client privilege and/or  
15          attorney work product doctrine. NEW further objects to this Request to the extent  
16          that it seeks information pertaining to individuals, the disclosure of which would  
17          constitute an unwarranted invasion of the affected individuals' constitutional,  
18          statutory and/or common law rights to personal privacy and confidentiality. NEW  
19          further objects to this Request to the extent that it seeks private, privileged, and  
20          confidential commercial, financial, and/or proprietary business information.

21          NEW further objects to this Request as premature to the extent that it  
22          seeks documents that relate to the merits of Plaintiff's claims rather than to class  
23          discovery. NEW further objects to this Request to the extent that Plaintiff already  
24          has access to such information or can more expeditiously acquire it from Defendant  
25          Gateway.

26                   **(c) Movant's Argument**

27          See Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

1                                    **(d) NEW's Argument**

2            See Respondent's Argument in opposition to Request No. 48, *supra* at  
3 IV.B.25.d.

4                                    **(32) Request and Response No. 55**

5                                    **(a) Request No. 55**

6            All documents concerning Illinois National Insurance, including, without  
7 limitation, documents concerning any request for Warranty Service made to or  
8 received by Illinois National Insurance.

9                                    **(b) Response and Objection to Request No. 55**

10           In addition to its General Objections, NEW objects to this Request on the  
11 ground that it is vague and ambiguous as to the terms "request", "Warranty Service",  
12 and "received." NEW further objects to this Request on the ground that it is overly  
13 broad as to time and scope. NEW further objects to this Request on the ground that  
14 it is unduly burdensome and oppressive, and seeks documents and information that  
15 are outside the scope of this action and are not likely to lead to the discovery of  
16 admissible evidence. NEW further objects to this Request on the ground that it is, at  
17 least in part, duplicative of other requests. NEW further objects to this Request to  
18 the extent that it seeks information protected by the attorney-client privilege and/or  
19 attorney work product doctrine. NEW further objects to this Request to the extent  
20 that it seeks information pertaining to individuals, the disclosure of which would  
21 constitute an unwarranted invasion of the affected individuals' constitutional,  
22 statutory and/or common law rights to personal privacy and confidentiality. NEW  
23 further objects to this Request to the extent that it seeks private, privileged, and  
24 confidential commercial, financial, and/or proprietary business information. NEW  
25 further objects to this Request as premature to the extent that it seeks documents that  
26 relate to the merits of Plaintiff's claims rather than to class discovery. NEW further  
27 objects to this Request to the extent that Plaintiff already has access to such  
28 information or can more expeditiously acquire it from Defendant Gateway.



1 **(c) Movant's Argument**

2 *See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

3 **(d) NEW's Argument**

4 *See* Respondent's Argument in opposition to Request No. 48, *supra* at  
5 IV.B.25.d.

6 **(33) Request and Response No. 56**

7 **(a) Request No. 56**

8 All documents concerning New Hampshire Insurance, including, without  
9 limitation, documents concerning any request for Warranty Service made to or  
10 received by Illinois National Insurance.

11 **(b) Response and Objection to Request No. 56**

12 In addition to its General Objections, NEW objects to this Request on the  
13 ground that it is vague and ambiguous as to the terms "request", "Warranty Service",  
14 and "received." NEW further objects to this Request on the ground that it is overly  
15 broad as to time and scope. NEW further objects to this Request on the ground that  
16 it is unduly burdensome and oppressive, and seeks documents and information that  
17 are outside the scope of this action and are not likely to lead to the discovery of  
18 admissible evidence. NEW further objects to this Request on the ground that it is, at  
19 least in part, duplicative of other requests. NEW further objects to this Request to  
20 the extent that it seeks information protected by the attorney-client privilege and/or  
21 attorney work product doctrine. NEW further objects to this Request to the extent  
22 that it seeks information pertaining to individuals, the disclosure of which would  
23 constitute an unwarranted invasion of the affected individuals' constitutional,  
24 statutory and/or common law rights to personal privacy and confidentiality. NEW  
25 further objects to this Request to the extent that it seeks private, privileged, and  
26 confidential commercial, financial, and/or proprietary business information. NEW  
27 further objects to this Request as premature to the extent that it seeks documents that  
28 relate to the merits of Plaintiff's claims rather than to class discovery. NEW further

1 objects to this Request to the extent that Plaintiff already has access to such  
2 information or can more expeditiously acquire it from Defendant Gateway.

3 **(c) Movant's Argument**

4 *See* Movant's Argument in support of Request No. 12, *supra* at III.B.1.c.

5 **(d) NEW's Argument**

6 *See* Respondent's Argument in opposition to Request No. 48, *supra* at  
7 IV.B.25.d.

8 ***C. Requests and Responses Nos. 25 and 26.***

9 NEW objects to these two Requests on the ground that they relate to the  
10 merits of Plaintiff's claims rather than to class discovery and are thus premature.

11 **(1) Request and Response No. 25**

12 **(a) Request No. 25**

13 All documents concerning any communications between any holder of a  
14 Gateway Warranty and NEW.

15 **(b) Response and Objection to Request No. 25**

16 In addition to its General Objections, NEW objects to this Request on the  
17 ground that it is overly broad as to time and scope. NEW further objects to this  
18 Request on the ground that it is unduly burdensome and oppressive, and seeks  
19 documents and information that are outside the scope of this action and are not  
20 likely to lead to the discovery of admissible evidence. NEW further objects to this  
21 Request on the ground that it is, at least in part, duplicative of other requests. NEW  
22 further objects to this Request to the extent that it seeks information protected by the  
23 attorney-client privilege and/or attorney work product doctrine. NEW further objects  
24 to this Request to the extent that it seeks information pertaining to individuals, the  
25 disclosure of which would constitute an unwarranted invasion of the affected  
26 individuals' constitutional, statutory and/or common law rights to personal privacy  
27 and confidentiality. NEW further objects to this Request on the ground that it seeks  
28 private, privileged, and confidential commercial, financial, and/or proprietary

1 business information. NEW further objects to this Request as premature to the  
 2 extent that it seeks documents that relate to the merits of Plaintiff's claims rather  
 3 than to class discovery.

4 **(c) Movant's Argument**

5 NEW's objection that this Request is premature is without merit. NEW's  
 6 own attempt to allocate to Gateway all responsibility for providing Service under the  
 7 ESP warranties has placed the issue of NEW's role in this litigation at center stage.  
 8 This Request does not go to the merits of Plaintiff's claims but is instead plainly  
 9 targeted to ascertaining NEW's obligations in servicing the ESP warranties vis-a-vis  
 10 the putative class and other corporate entities, including other (likely) third-party  
 11 defendants. NEW's obligations under the SCAA and Reverse SCAA, and its  
 12 responsibilities and course of conduct in regards to the putative class, are of  
 13 paramount importance to Plaintiff's ability to demonstrate both commonality and  
 14 typicality. *See* Fed. R. Civ. P. 23(a)(2) and (3); *see also Blackie v. Barrack*, 524  
 15 F.2d 891, 902 (9th Cir. 1975) (the requirement of commonality is satisfied where  
 16 "the class is united by a common interest in determining whether a defendant's  
 17 course of conduct is in its broad outlines actionable") (emphasis added).

18 In addition to acknowledging the primacy of its role in this litigation through  
 19 the production of what NEW admits are the "operative written agreements," NEW  
 20 has further conceded that it has in its possession documents relating specifically to  
 21 Plaintiff Wilson. *See* O'Brien Decl., Exh. C (Email from Geoffrey T. Stover to  
 22 Joshua S. Bauchner, dated August 27, 2010). Documents relating to Plaintiff  
 23 Wilson and, by extension, other putative class members, are plainly relevant to  
 24 Plaintiff's motion for class certification and should be timely produced. *See* Fed. R.  
 25 Civ. P. 23(a)(1)-(3); *see also General Tel. Co. of the Southwest v. Falcon*, 457 U.S.  
 26 147, 155 (1982) (finding class certification "'peculiarly appropriate' when the  
 27 'issues involved are common to the class as a whole' and when they 'turn on  
 28 questions of law applicable in the same manner to each member of the class'")

(quoting *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979)); *Doe v. Los Angeles Unified School Dist.*, 48 F. Supp. 2d 1233, 1245 (C.D. Cal. 1999) (Rule 23(a)(3)'s typicality requirement is satisfied where "the action can be efficiently maintained as a class and [] the named plaintiffs have incentives that align with those of absent class members so...that the absentees' interests will be fairly represented") (citation omitted).

**(d) NEW's Argument**

This request underscores NEW's argument that Plaintiff's document requests are grossly overbroad and overinclusive. *See* Respondent's Argument in opposition to Request No. 1, *supra* at IV.A.1.d and Request No. 14, *supra* at IV.B.2.d. Moreover, the burden on NEW in locating documents responsive to this request would be particularly onerous because there is no identifier in NEW's database flagging the sender of an incoming email as a Gateway ESP holder. (Danoff Decl., ¶ 13); Respondent's Argument in opposition to Requests No. 1, *supra* at IV.A.1.d. Consequently, NEW would be required to cull all emails received during the relevant period to determine whether the sender was a Gateway ESP holder and, if so, whether the subject of the email concerned a Gateway ESP. Such burden is not justified by the minimal benefit that responsive documents might offer Plaintiff. *Gonzalez*, 234 F.R.D. at 680.

**(2) Request and Response No. 26**

**(a) Request No. 26**

All documents concerning any communications between any holder of a Gateway Warranty and Gateway.

**(b) Response and Objection to Request No. 26**

In addition to its General Objections, NEW objects to this Request on the ground that it is overly broad as to time and scope. NEW further objects to this Request on the ground that it is unduly burdensome and oppressive, and seeks documents and information that are outside the scope of this action and are not

1 likely to lead to the discovery of admissible evidence. NEW further objects to this  
 2 Request on the ground that it is, at least in part, duplicative of other requests. NEW  
 3 further objects to this Request to the extent that it seeks information protected by the  
 4 attorney-client privilege and/or attorney work product doctrine. NEW further objects  
 5 to this Request as premature to the extent that it seeks documents that relate to the  
 6 merits of Plaintiff's claims rather than to class discovery. NEW further objects to  
 7 this Request to the extent that Plaintiff already has access to such information or can  
 8 more expeditiously acquire it from Defendant Gateway.

9 **(c) Movant's Argument**

10 *See* Movant's Argument in support of Request No. 25, *supra* at III.C.1.c.

11 **(d) NEW's Argument**

12 This request underscores NEW's argument that Plaintiff's document requests  
 13 are grossly overbroad and overinclusive. *See* Respondent's Argument in opposition  
 14 to Request No. 1, *supra* at IV.A.1.d and Request No. 14, *supra* at IV.B.2.d.  
 15 Moreover, Plaintiff is required to first seek documents from Gateway when they are  
 16 more easily accessible to Gateway. *See* Respondent's Argument in opposition to  
 17 Request No. 1, *supra* at IV.A.1.d, and Request No. 12, *supra* at IV.B.1.d. It is hard  
 18 to imagine a document that would more properly be characterized as a "Gateway-  
 19 generated document" than a communication between a Gateway ESP holder and  
 20 Gateway. Indeed, courts in this district have found it "inexplicable" when a  
 21 document request seeks from a non-party documents regarding communications  
 22 between two other parties without demonstrating that the non-party would likely  
 23 "have such documents in the normal course of business." *See Moon*, 232 F.R.D. at  
 24 638, n.5. As Plaintiff has not provided a basis for his belief that NEW would have  
 25 custody of communications between Gateway and a Gateway ESP holder,  
 26 compelling NEW to expend resources searching for such documents constitutes an  
 27 undue burden.

1 **IV. CONCLUSION**

2 For the reasons set forth above, Plaintiff respectfully requests that the Court  
3 order NEW to produce any and all documents responsive to Plaintiff's June 2010  
4 subpoena in its possession, custody or control. For its part, NEW respectfully  
5 requests that the Court deny Plaintiff's motion to compel.

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1 DATED: September 10, 2010

Respectfully submitted,

2 CALDWELL LESLIE & PROCTOR, PC  
3 ROBYN C. CROWTHER  
4 MATTHEW O'BRIEN

5  
6 By \_\_\_\_\_/S/\_\_\_\_\_

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8 Attorneys for Plaintiff and all others similarly  
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9 DATED: September 10, 2010

Respectfully submitted,

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16 DATED: September 10, 2010

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23 Attorneys for Non-Party National Electronics  
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